This is a digital copy of a book that was preserved for generations on library shelves before it was carefully scanned by Google as part of a project to make the world's books discoverable online.

It has survived long enough for the copyright to expire and the book to enter the public domain. A public domain book is one that was never subject to copyright or whose legal copyright term has expired. Whether a book is in the public domain may vary country to country. Public domain books are our gateways to the past, representing a wealth of history, culture and knowledge that's often difficult to discover.

Marks, notations and other marginalia present in the original volume will appear in this file - a reminder of this book's long journey from the publisher to a library and finally to you.

Usage guidelines

Google is proud to partner with libraries to digitize public domain materials and make them widely accessible. Public domain books belong to the public and we are merely their custodians. Nevertheless, this work is expensive, so in order to keep providing this resource, we have taken steps to prevent abuse by commercial parties, including placing technical restrictions on automated querying.

We also ask that you:

+ *Make non-commercial use of the files* We designed Google Book Search for use by individuals, and we request that you use these files for personal, non-commercial purposes.

+ *Refrain from automated querying* Do not send automated queries of any sort to Google's system: If you are conducting research on machine translation, optical character recognition or other areas where access to a large amount of text is helpful, please contact us. We encourage the use of public domain materials for these purposes and may be able to help.

+ *Maintain attribution* The Google "watermark" you see on each file is essential for informing people about this project and helping them find additional materials through Google Book Search. Please do not remove it.

+ *Keep it legal* Whatever your use, remember that you are responsible for ensuring that what you are doing is legal. Do not assume that just because we believe a book is in the public domain for users in the United States, that the work is also in the public domain for users in other countries. Whether a book is still in copyright varies from country to country, and we can't offer guidance on whether any specific use of any specific book is allowed. Please do not assume that a book's appearance in Google Book Search means it can be used in any manner anywhere in the world. Copyright infringement liability can be quite severe.

About Google Book Search

Google's mission is to organize the world's information and to make it universally accessible and useful. Google Book Search helps readers discover the world's books while helping authors and publishers reach new audiences. You can search through the full text of this book on the web at `http://books.google.com/`

Storage
US 957.9 OKL
The compulsory arbitration of labor
HARVARD LAW LIBRARY APZ7831
3 2044 031 978 364

OKLAHOMA. UNIVERSITY.
UNIVERSITY EXTENSION
DIVISION

COMPULSORY ARBITRATION OF LABOR DISPUTES

1917

HARVARD
LAW
LIBRARY

US
957.9
OKL

[redacted]

[redacted]

Rol - 295
(4)

UNIVERSITY OF OKLAHOMA BULLETIN

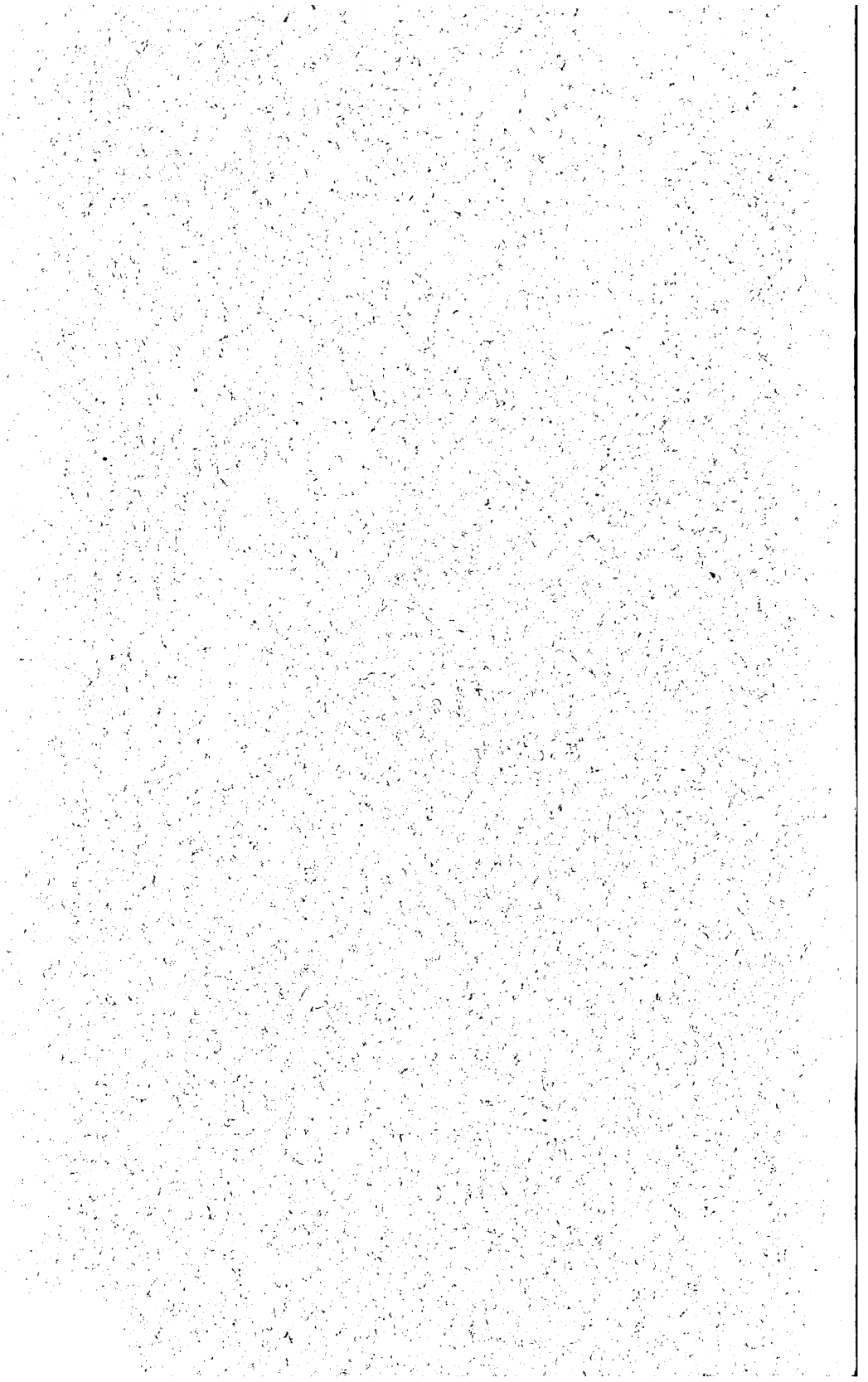
New Series No. 137. University Extension Series No. 34

UNIVERSITY OF OKLAHOMA BULLETIN

THE COMPULSORY ARBITRATION
OF LABOR DISPUTES ON PUBLIC UTILITIES

NORMAN, OKLAHOMA
OCTOBER 1, 1917

University of Oklahoma Bulletin, published by the university, is issued semi-monthly. Entered at the postoffice at Norman, as second class matter, under act of congress of August 24, 1912.



Oklahoma. University.
= University extension division

THE UNIVERSITY OF OKLAHOMA
BULLETIN

THE COMPULSORY ARBITRATION OF LABOR DISPUTES

ARGUMENTS FOR AND AGAINST

UNIVERSITY OF OKLAHOMA
EXTENSION DIVISION
NORMAN, OKLA.

S
U5
q5 q.9

1x
A-18

CONTENTS

THE QUESTION, AS STATED BY THE OKLAHOMA HIGH SCHOOL DEBATING LEAGUE

Resolved; That the Federal Government should require Compulsory Arbitration of Labor Disputes on Interstate Railroads. (The term railroads to include railroads and subsidiary corporations—telegraphs and telephones.)

OTHER STATEMENTS

Resolved; That Arbitration, compulsory if necessary, should replace Strikes and Lockouts on all Public Utilities.

Resolved; That Employers and Employes engaged on Public Utilities should be compelled to settle their disputes in legally establisht courts of arbitration.

FOREWORD

The chief difference between this and former Debate Bulletins issued by the University of Oklahoma is that Affirmative and Negative materials are not separated or distinguisht. This change is made to make it more likely that debaters will read both sides of the question. The chief effect of the change is seen in the "Digests." In using them the debater will find it necessary to indicate first the paragraphs he desires to use. In making out his outline or brief he can refer to these paragraphs by number.

As the debater reads the main articles he should make brief notes of the points which appeal to him most. These will be something like the "digests" which have been written up from notes taken on articles not given in the bulletin.

Very early in his study of the question the debater should begin to work out a tentative outline and try to fit into it the various "points" he finds in his reading. Of course the outline will change and improve as his information increases.

The first thing is to determine the "issues", that is, the points as to which the statements of the opposite sides are most directly contradictory. The winning of the debate depends chiefly on how these issues are handled. To prove something the other side does not dispute is lost time and opportunity.

You must know your opponents' arguments before you can meet them. It is a common fault of debaters to study their own side of the question too exclusively. This is why debating so often has a warping effect on mental habits and attitudes. Debaters often go thru life with convictions on one side of a question when they would have been equally convinced of the other side if accident had put them on that side of the debate. Study both sides.

The subject of this debate is grounded very deeply in the problems and mysteries of human relationships. It would be far better to lose the debate than to miss the ethical problems involved in the theme. You wish to win the debate; that is right. But more than this you wish to become a fair and honorable debater; and yet still more to reach a true and right opinion.

It is scarcely necessary to say that this bulletin is merely a collection of debating materials; its purpose is not to exploit either side. The University neither endorses or assumes any responsibility for any view whatever. The purpose is simply to furnish, as nearly as possible, an equal amount of materials for both sides.

INVOLUNTARY SERVITUDE AND THE RIGHT TO STRIKE

By John A. Fitch

The Survey, Jan. 27, 1917

Senator Newlands, chairman of the Senate Committee on Interstate Commerce, has drafted a bill, the terms of which are, in brief, as follows: Whenever a controversy between a railroad and its train employes arises, both sides must immediately notify the Federal Board of Mediation and Conciliation, which shall attempt to mediate between the parties, and if unsuccessful, shall propose arbitration. If the controversy can be settled by neither method the board must so advise the President, and he is thereupon required to appoint a commission of three members to investigate the nature and causes of the controversy. The commission is to report its findings and make recommendations concerning a just settlement as soon as possible and within three months at the outside. The report is to be made public. It is to be unlawful for either a strike or a lockout to be declared from the time notice of the controversy has been filed until thirty days after the commission of inquiry has made its report. Heavy penalties are provided for either employer or employe violating the act, or for "any person inciting, encouraging, or in any manner aiding" in a violation. A similar bill has been introduced in the House by Representative Adamson.

Under the terms of this bill, should it become a law, four months would be the longest period during which a strike would be unlawful, provided a board of inquiry were appointed as soon as the controversy arose. But the bill provides for an attempt at mediation by the Board of Mediation and Conciliation before the matter is referred to the President. That will take some time. Then it is quite possible that there may be some delay in the appointment of a board of injuiry. Consequently the proscribed period would be, in all probability, not less than five months.

In the hearings before Senator Newlands' committee and elsewhere—in the papers, in union convention halls, in public assemblages—there has been in the last few months a great outpouring of opinion on the merits of the proposal. Employers, employes and "that great third party, the public," have expressed themselves with vigor.

There is reason for the discussion. The question is one that admits of more than one opinion. Nothing could indicate that

more clearly than the fact that both capital and labor have at different times occupied a position diametrically opposed to the position each occupies today. Both in the United States and in New Zealand, labor has favored compulsory arbitration at a time when employers opposed it. In his recent book, Organized Labor in America, George Gorham Groat tells how the Knights of Labor in New York, in 1888, having found that employers would not use the machinery for voluntary arbitration provided by law, adopted a resolution demanding amendments that would "compel the submittal of all existing trouble to the said Board of Arbitration when deemed necessary." In 1893 they renewed their demand for compulsory arbitration. The first compulsory arbitration act in New Zealand was passed in 1894, with the support of labor representatives and over the opposition of the employers. It came after several disastrous strikes in which the employers had refused to arbitrate.

The present discussion reveals a line-up of the different parties at interest that is fairly clear cut. It is quite evident that capital, in general, is going to lend its support to the President's plan. Indeed, to the casual observer it might appear that opinion among employers is unanimously favorable. James A. Emery, counsel for the National Association of Manufacturers, has appeared before Senator Newlands' committee and endorsed the plan. Representatives of the Boston Chamber of Commerce, of a national association of leather manufacturers and of other employers' associations have done likewise. From spoken utterances and from editorials in trade and other papers, it is apparent that the manufacturers and employers of labor generally, all over the country, are in favor of the proposed legislation.

Recorded capitalistic opinion has so far come, however, from consumers of raw material and shippers of finished products rather than from employers of labor as such. They want the trains to run, as Mr. Emery told the Senate committee, so that their plants may not be forced into idleness. Their attitude may be affected, to be sure, by the notion that it would be pleasant to have the railway unions put in check, but it is clear that they are influenced, in the main, by motives that are practically indistinguishable from those of the "public."

The railroads themselves are the only interests directly affected as employers of labor. For some reason they have been very reticent about expressing themselves, but it is safe to say that they are not opposed. In an address before the Economic Club of New York, on December 11, 1916, Elisha Lee,

chairman of the Conference Committee of Railway Managers, said of the proposed law: "It is plain that the finding of such a public tribunal could not well be rejected by either party without alienating public sympathy; and without the support of the public no body of men, whether employers or employes, can hope to wage industrial warfare regardless of the public interest. * * * Has not the nation the right to say to the railroad workers, as suggested by the President, 'You must not interrupt the national life without consulting us'?"

Organized labor, on the other hand, is unanimously with the opposition. Chiefs of the railway brotherhoods and leaders of unions affiliated with the American Federation of Labor have alike denounced the measure as a denial of the fundamental rights of the workers and as contrary to the spirit of American institutions. This attitude will be discussed, somewhat in detail further on.

The Public Wants the Trains to Run

The general public appears to be in a mood favorable almost to any plan to prevent any interruption in the running of trains. Accustomed to the settlement of railway disputes by voluntary arbitration, a sense of security had grown up that was rudely shattered by the narrow escape, last fall, from a nation-wide tie-up of the railroads. As a result there arose a sudden clamor that such a thing must be made impossible. Not only was the plan for the postponement of a strike pending the results of a compulsory investigation extremely acceptable, but there was a willingness in many quarters to go much further. It is altogether probable that if President Wilson had come forward with a plan for compulsory arbitration and making strikes of transportation employes altogether illegal, it would have been received with a good deal of favor.

What are we to think of these divergent views? The issues before us are of such tremendous importance that a sudden or careless decision is hardly safe, though it is to be feared that not a few have made their decisions both suddenly and carelessly. On the one hand is the danger, neither theoretical nor remote, as we now understand, that railway traffic may be suspended whenever the management and the brotherhoods have a difference of opinion. With this suspension would go calamities of unknown extent, against which the great body of the people are powerless to make adequate preparation. On the other hand is offered a radical break with American thought and practice, carrying with it possibilities beyond our power to estimate or accurately to gauge in advance.

To make clear the exact nature of labor's opposition it is necessary to take note of the fact that the plan involves two important propositions: First, that there shall be compulsory government investigation of railway controversies that cannot be settled by the ordinary peaceable means; second, that it shall be illegal to call a strike while such an investigation is going on.

To the first proposition, so far as any recent action would indicate, labor is not opposed. Both the American Federation of Labor and the brotherhoods opposed a bill providing for compulsory investigation on railroads in 1904, but there are laws in nineteen states, unopposed by the unions, giving the commissioner of labor or other administrative officer power to make compulsory investigations. In New York labor has often petitioned for the exercise of this power. Neither, in any recent discussion of the Wilson program, has organized labor shown any hostility to the idea of compulsory investigation **per se.**

The thing to which the men of organized labor are strenuously opposed is the limitation of their right to strike at any time they see fit. Success often depends upon immediate action, without previous warning. The labor men say that if they are compelled after deciding to strike to wait either a definite or an indefinite length of time while an investigation is being made, the interval will be used by the employer to get ready to fight the strike. He can employ strikebreakers and bring them to the scene of action, ready to go to work. The investigation, whatever it may reveal, carries with it no power to secure improved conditions for the workers. The employer may, therefore, at the end of the period of investigation, put into effect or continue the very policies against which protest was made. The workers have no power of effective protest other than the one that they were estopped from using when the investigation began—the strike. This power is restored to them at the end of the period of investigation, but this time the employer is alert and prepared. The strategic time for striking has gone by.

It is apparent that this is a handicap that might be almost insuperable for unskilled workers engaged in a local strike, but one of less importance where the strike area is large and the strikers men of highest skill and hard to replace. But this latter is exactly the case with the railroad train crews, and it is to them alone that the proposed restriction is to apply. They are highly skilled, and they have now entered upon the policy of bargaining, not for a single locality or for a single railway

system, but for the whole country. If a hundred men should go on strike on a branch line somewhere, it is quite likely that the railroad could get men to take their places. The case would be different if 400,000 men decided to strike. Even if there should be a waiting time of six months it is difficult to see what preparations could be made by the railroad executives in the way of hiring new men that would seriously affect the relative positions of employers and employes.

There is another fact of even greater significance that should be considered at this point. The brotherhoods are in the habit, voluntarily, of giving all the notice of their intent to strike—of providing voluntarily all the waiting time that is contemplated in the proposed law. No one who looks back over the history of the controversy that led to the crisis of last fall can fail to be impressed with the long period devoted to negotiation and the still longer period during which the public and the railroads were fully informed of the impending controversy. More than eight months elapsed between the beginning of the movement and the date set for the strike. The formal decision to press the demands was known six months in advance, and it was also known at that time that the railroads would reject them. Conferences began three months before the final break, and the result of the strike vote was known more than thirty days before the day finally decided upon for the walkout.

In the other railway disputes during the last decade a similar policy of negotiation and waiting has been followed. The point may reasonably be made that if the brotherhoods' interests are not affected injuriously by this voluntary policy, they will not be if the same policy is provided for by law.

Permanent Prohibition of Strikes Feared

Why, then, have the brotherhoods been so concerned in raising the issue that such a law would be contrary to the thirteenth amendment? The answer may lie in some premonition that arguments supporting the constitutionality of laws to inhibit temporarily the right of railroad men to strike can with equal logic apply to a permanent prohibition.

Such a foreboding, whether or not it is an explanation of the attitude of the union leaders, appears to be not without its justification, in view of some recent comment by careful students of constitutional law. In an address before the New York Academy of Political Science last November, Thomas I. Parkinson, of the Legislative Drafting Research Fund of Columbia University, reviewed a number of Supreme Court cases in which the

thirteenth amendment has been involved. He showed that the peonage cases, in which the United States Supreme Court has held that a man cannot be compelled under threat of fine or imprisonment to continue at labor for another, involved simply the right of an individual to quit work. The question of striking was in no way affected by the decisions. Mr. Parkinson cited other cases where the courts have recognized certain limitations to the operation of the thirteenth amendment, as where work on public roads has been required. He pointed out, very significantly, that while in express terms there are no limits to the application of the amendment, yet compulsory labor is enforced in the army, and deserters are arrested and punished. From this he drew the inference that for reasons of public policy the right freely to quit work may sometimes be restricted.

Mr. Parkinson showed clearly that striking is different from the individual quitting of work. It is not an abandonment of the job. He drew a distinction between a strike in strictly private employment and one in public or quasi-public enterprises. The essence of his contention was that in such undertakings, where a cessation of work will cause serious injury to the public, a prohibition of the right to strike, or at least a temporary prohibition, would be a valid and constitutional law. A plain case involving such a point has never come before the Supreme Court, but Mr. Parkinson was able to quote a cautious passage from a Supreme Court decision that seems to add weight to his argument. In the Adair case (208 U. S. 161) involving the discharge of a man for membership in a union, Justice Harlan, who delivered the opinion of the court, said: "And it may be—but upon that point we express no opinion—that, in the case of a labor contract between an employer engaged in interstate commerce and his employe, Congress could make it a crime for either party, without sufficient excuse or notice, to disregard the terms of such contract or to refuse to perform it."

This idea has come prominently to the fore in the hearings before the Senate committee. Senator Cummins, in questioning one of the witnesses, remarked, "I never have heard, in our country, of a temporary injunction that could not ripen into a permanent injunction." Everett P. Wheeler, of New York, testifying before the committee, stated that in his opinion, there is no difference from the standpoint of the constitution between a temporary prohibition of strikes and a permanent prohibition. He held either to be valid.

Application to Other Trades

It is apparent, therefore, that the railroad men may reasonably look upon the Newlands bill as an entering wedge for legislation of a more drastic sort, designed to take away altogether their right to strike. As such they may reasonably fear it, since no adequate machinery for the determining of just standards is offered to take the place of the appeal to force.

In the same way and for similar reasons, other classes of labor have reason to fear the proposal. If such a law is constitutional as to public service employment, no one knows to what other industries it may be made to apply. There are no fixed and determined limits to the field of public service. Enterprises "charged with a public interest," they have been called. What industry is not conceivably charged with a public interest? At the present time the term must be held to include coal mines. Manufactories of food and clothing can easily be brought within such a classification, steel mills surely belong, and since we cannot live without shelter, planing mills and lumber camps come readily into the same category. It is impossible to say where the line between public service and strictly private industry can be drawn. Every argument, therefore, that strengthens the conviction that a temporary prohibition of any sort of strike is permitted by the constitution is a stronger reason for the opposition of labor.

The Right to Strike Curtailed by the Courts

The reasons lie, furthermore, deep-rooted in the history of industrial struggles. Workmen have not been free so very long to make demands for improved conditions or to enforce such demands. One hundred years ago a concerted movement for higher wages constituted an illegal conspiracy and was punishable as such. In America the application of the common law of conspiracy to the activities of labor unions was slowly weakened by the decisions of courts. In England the modification was accomplished by statute. In this respect the English workers are better off, for, dependent as the American workers are upon the decisions of courts, they are controlled by liberal and reactionary decisions alike. Strange as it may seem there is developing a tendency here and there on the part of the courts toward a more illiberal attitude with respect to the activity of unions. A man was freer to strike in Massachusetts fifty years ago than he is today, and the only difference is in the attitude of the courts. In West Virginia a few years ago a court held the

miners' union to be an illegal conspiracy. In Arkansas within a year a court has held that a union in striking was illegally interfering with interstate commerce.

The West Virginia case was reversed by a higher court, and both that and the Arkansas case have been appealed to the United States Supreme Court. No one knows what the decision of that court will be. But in the light of these decisions it is evident that labor must be more interested in a statute guaranteeing to them the liberties that the courts gave them fifty years ago than in a proposal to restrict union activities. That is what labor tried to get in securing an amendment to the Clayton act. It is not yet known, because the courts have not passed upon it, just how much the Clayton act means in the way of insuring freedom of action. In the meantime is it a cause for wonder that labor is opposing a law designed to limit their rights still further?

The right to strike is the only final defense of the worker against oppression. It is the only weapon readily available, the use of which he thoroughly understands. The right is often more powerful than its exercise would be. Knowledge of the power of the workers to act, effectively, if a substantial measure of justice is not done them, is often the only influence felt by a mean employer. In competitive industry the mean employer drags down the standards for the whole trade. If such an employer knew that there was no effective power back of a demand, or if he knew that that power must be held in abeyance for a definite period, he would take every advantage afforded by that knowledge.

To be sure, proponents of compulsory arbitration insist that the worker is fully protected by the machinery it provides for the determination of standards and the settlement of disputes. The answer of the workers is that they have no assurance that their contentions will receive the consideration due them from a board of arbitration sitting as a court under a compulsory law. They do not know who will sit on such a board, what preconceived notions of justice may be brought to bear on the situation, or what influences, political or financial, may be invoked to sway its judgment. It may be pointed out that neither is an appeal to the strike a sure method, as distinguished from compulsory arbitration, for securing their ends. But at least a strike is their own affair. If it fails they can make plans for preventing its failure another time. If compulsory arbitration fails to secure improved conditions they have no remedy at hand.

Suppose we grant the validity of these objections. Shall we then leave the situation where it was last fall, when the calamity of a nation-wide strike was just a few days off? We may well be concerned about the rights of labor, but what about the rights of labor plus those of everyone else—the one hundred millions of people of all sorts who would suffer in a railway strike? That is a question that the brotherhoods must face, and it is neither to their credit nor particularly to their advantage that the leaders seem quite disinclined, just now, to consider it at all.

Who Is "the Third Great Party"—the Public?

Beyond all cavil, it must be admitted that the interest of the public in this matter is greater than that of the railway corporations or the brotherhoods. There is danger, of course, in talking of the public as the "great third party" to industrial controversy. Sometimes it is hard to tell who the public is. There are in the neighborhood of 30,000,000 wage-earners in this country. They have certain common interests. There is a bond of sympathy that, more or less loosely, unites them. But they are a part, and one of the very largest parts, of what we are talking about when we speak of "the public." And it is they who would suffer most keenly if a railway strike took place.

It is conceivable, of course, that at some momentous time a strike might be called on the railroads over a point of vital concern not to railway men alone, but to the whole working class. In such a case the railway workers would be fighting the battle of all labor. But, normally, railway controversies are limited to a conflict between managers and men. The public that would be seriously injured by a transportation strike is composed of capitalists and laborers, employers and employers, consumers, shippers, union and non-union labor, the families of the 400,000 men engaged in railway service and the 400,000 men themselves. Not a single one of our 100,000,000 people could escape. The 400,000 brotherhood members and their families, despite their suffering, would stand to win something; but they would be the only ones. Temporarily, at least, everyone else would lose.

The popular concern over the strike prospect—complete stoppage of traffic—differs more in degree than in kind from the long expressed concern over inadequate service, high tariffs and fares, and other lesser hindrances to travel, to shipment, to communication. To many it seems illogical that there should be public control over railway managers and not over the workers. Consequently, we find men like President Van Hise and Oscar S. Straus, men long identified with the movement for

regulation of public utilities, who have had experience in the arbitration of labor disputes on such utilities, advocating the extension of regulation from public service corporations to public service unions.

But the significant thing in the extension of governmental control over the carriers has been that this constructive program has been based on a careful study of facts. This was true of the early movement in Wisconsin under La Follette. It is true of each step in the work of the Interstate Commerce Commission. Evidence of it appears in the huge investigation under way of the physical valuation of railway properties as the basis of further federal legislation. When we turn from the question of public information and public policy as to interstate shipper and carrier to that of public information and public policy as to interstate operator and trainman, the situation is different.

The country suddenly awakened to the need of information on the subject of the relations of employer and employe a few years ago when the dynamite conspiracy in the structural iron trade came to light. Out of that revelation grew a demand for the creation of a commission on industrial relations to examine the whole subject of industrial unrest and to discover some better method of dealing with it.

In the first appeal of a body of citizens to the President and Congress for the creation of such a commission there was a plea for a study of the Canadian industrial disputes act. In his message to Congress, on February 2, 1912, recommending the passage of a law that would permit the appointment of the commission, President Taft said "at the moment when the discomforts and dangers incident to industrial strife are actually felt by the public there is usually an out-cry for the establishment of some tribunal for the immediate settlement of the particular dispute. But what is needed is some system, devised by patient and deliberate study in advance, that will meet these constantly occurring and clearly foreseeable emergencies—not a makeshift to tide over an existing crisis. Not during the rainstorm but in fair weather should the leaking roof be examined and repaired."

The commission, when appointed, included a representative of the railroads and a brotherhood president; each, as a matter of fact, named by the interest he represented.

Strangely enough, despite the make-up of the commission and the emphasis that had been laid on the subject, little attention was paid to the settlement of disputes, A general hearing was given on the subject of mediation and arbitration, which did not include any consideration of railroad controversies. A study of

the subject, conducted for the commission by Prof. George E, Barnett, of Johns Hopkins University, never was published. This study has recently been brought out by a well-known publisher as a book.

It is interesting to note that in the final report of the commission there was no suggestion anywhere of compulsory arbitration. Compulsory investigation without any limitation on the right to strike was favored by the employers on the commission but rejected by the other six commissioners. The proposals of the Manly and Commons reports were quite similar so far as compulsion was concerned. Both favored machinery for mediation. Both favored investigation, but only if the consent of both parties could be secured. Prof. John R. Commons, after reviewing the Canadian and Australasian laws, said: "It is believed that any of these compulsory methods are unsuited to American conditions, and that the foregoing recommendation for a voluntary board of investigation, adapted from the Canadian act, but without its compulsory features, will prove a valuable addition to the Newlands act."

Where the Industrial Relations Commission Split

It was on the very question of mediation and arbitration that Chairman Frank P. Walsh and the labor commissioners dissented from the Manly report. The grounds of their dissent were not sufficiently explicit, however, to indicate their position on the subject of investigation. They were opposed to setting up new machinery, as proposed by Mr. Manly, but they had no other definite proposals to make in the way of improving existing machinery.

The report signed by Commissioners Aishton, Ballard and Weinstock, representing employers, expressed dissent from the Commons report on the subject of voluntary investigation.

"We further dissent," their report reads, "from said report in its limitation of public inquiry in labor disputes only to cases where both sides invite such inquiry. We believe that in the public interest there are times when compulsion in labor disputes is thoroughly justified. We feel, with organized labor, that there should be no restriction put upon the right to strike, realizing as we do, that the strike is the only weapon which, in the interest of labor, can be effectively and legally used to aid in bettering its conditions. We feel, also, that there should be no restriction placed upon the employer in his right to declare a lockout in order better to protect what he regards as his interest, and we therefore would not favor any plan that would

inflict penalties upon the worker or upon the employer for declaring a strike or lockout. * * *

"Where strikes and lockouts take place on a large scale, and more especially in connection with public utilities, the public inevitably becomes a third party to the issue, in that it has more at stake than both parties to the dispute combined. * * * The public, therefore, as the third party to the issue, is justified in demanding that an investigation take place, and that the facts be ascertained and presented in an impartial spirit to the general public, so that ways and means may be found of adjudicating the dispute or of throwing the influence of a properly informed public opinion on the side which has the right in its favor."

These quotations are interesting, in view of the proposals now before Congress, but they throw no new light on the subject.

The Industrial Relations Commission failed to give the public any adequate basis of facts on the question of handling industrial disputes. Neither has any other agency of the government made any recent and adequate study of either the compulsory arbitration laws of Australasia or of the Canadian industrial disputes act, which is the model on which the legislation now proposed is based. The most recent government report dealing with the subject is a compilation and partial analysis of the laws of the leading countries of the world, relating to mediation, arbitration or other action in respect to labor controversies on railroads, put out by the United States Board of Conciliation and Mediation. Although given to the public at a time when interest is centered on the Canadian disputes act the information is inadequate for the forming of an intelligent opinion as to its operation.

Conflicting Testimony on the Canadian Act

Indeed, just the contrary is the fact, as can be shown by a reference to a bit of testimony before Senator Newlands' committee. A representative of the Boston Chamber of Commerce stated that in the two years prior to the passage of the Canadian act there were 200 strikes, and in the two years following its enactment but two. Such an inference as to the effect of the passage of the law is surely to be drawn from a table published in the report of the United States Bureau of Mediation and Conciliation. It shows the number of applications for boards of investigation, by years, the number of boards appointed and the number of cases in which strikes were "not averted or ended."

According to the table, there was only one such case in 1907 and one in 1908. **Ergo**, only two strikes in 1907 and 1908! But elsewhere in a more extended table giving a certain amount of detailed information careful search reveals the fact that there were in 1907 alone at least eight strikes and one lockout in the industries covered by the act; and the lockout and at least five of the strikes were in volation of its provisions.

The report is limited to data published by the Canadian government, and it gives no information on strikes illegally called without any application for boards of investigation. Where a strike began illegally, and later a board was asked for, the summary table gives no light. Such cases come under the category of strikes "averted or ended." The report is equally silent on the question of enforcement.

There is no reference in this report and no governmental study has been made of the working of laws already on the statute books of various states providing for compulsory investigation, but not interfering with the right to strike. These laws have often been effective in bringing about the speedy settlement of industrial disputes. It would seem to be the part of wisdom to consider them carefully before enacting new legislation. It is hard to see how anyone, even a violent partisan of one side or the other in the railway dispute, can desire to have sweeping legislation enacted until such a study has been made. Yet the curious fact seems to be that those who were the fiercest in their denunciation of the Adamson law, because no one knew how it would work, are exactly the ones who are most enthusiastically in favor of passing a law absolutely without investigation, which will change the theory and practice of a hundred years in the handling of industrial disputes.

The prevention of strikes is not an easy matter. In the long run they cannot be absolutely prevented, as Australian experience shows. But why attempt to prohibit what has so rarely occurred? Only three times in its history has the country been threatened with anything approaching a general railway tie-up. Only twice has such a strike actually taken place. The first was in 1877, before the railway brotherhoods had become very strong. The second was the Debs strike of 1894, for which the brotherhoods were not responsible. There have been no sectional strikes other than these, and strikes on individual railway systems have been few. Is it reasonable to suppose that compulsory restraint could have made a better record than this?

It will not avail for Congress to decree that there shall be no strikes. What Congress can do, however, and, in my opin-

ion, should do, is to provide for immediate investigation of every controversy and a publication of the facts in the case. Such a bill has been introduced and is before the committee. This is as long a step as the facts now in hand will justify. I believe that the knowledge of the reasons for the controversy that would thus be made available would create such a public opinion as would result in fair dealing on both sides, and with a sane regard for the rights of the public.

If such investigations were needed in any single strike, then surely, with the issue of all strikes potentially at stake, there is need for a thoroughgoing investigation of the laws of Canada, New Zealand and Australia, Europe and the American states. The facts should be laid before Congress. If they indicate clearly that the laws in any of those countries or states are working well, and that they are adapted to Federal regulation of interstate commerce, Congress would then be justified in considering whether it should enact similar laws. But until it has these facts it has no such justification.

THE ADVANTAGES AND DEFECTS OF COMPULSORY ARBITRATION

By Frank T. Carlton,
Albion College, Albion, Michigan

In the discussion of a vital and important economic problem such as the one now under consideration, in order that the essential matters may be clearly set forth and that the reader may understand exactly what the writer is driving at, it is unfortunately necessary to give careful attention to the meaning of certain terms used. At the outset, consequently, the words "advantages and defects" need consideration. These two familiar terms are capable of rather exact and satisfactory definition when applied to an engineering policy or to a method used by the stock breeder or the market gardener. But when the advantages or defects of a given economic or political policy are considered, new difficulties arise and unusual complications appear. What standard or yardstick can be used for the purpose of measuring advantage or defect? Theoretically, any economic or political program should be deemed advantageous or desirable when it promotes the welfare of society. But the man possessed of a knowledge of practical affairs and of different types and classes of people immediately makes a further and pertinent inquiry. From what angle of vision is the wel-

fare of society to be looked upon? Even the casual observer of industrial and labor problems must admit that what seems advantageous to an employer or a large stockholder in a big corporation often is urged as a defect by the employees of that company; and that which appears desirable to an outsider may be bitterly opposed by those on the inside.

Therefore, in any discussion of the advantages and defects of a policy affecting the relations of labor and capital, it is quite essential that a preliminary statement be offered disclosing the point of view of the writer. In this consideration of arbitration, the following fundamental points are subscribed to: 1. It is desirable that American wage-earners be organized into unions, and that these labor organizations be recognized and bargained with by the employers. Our government should no longer assume the attitude of indifferent neutrality. The right of wage workers to organize without interference on the part of employers should be given definite legal recognition. 2. A rising standard of living for American workingmen is favored. 3. Peace in industry is held to be highly desirable unless obtained at the expense of the self-respect and the standard of living of the wage-earners. Conclusions in regard to arbitration will doubtless be reached which cannot be acquiesced in by those who do not accept all or any one of these fundamental premises; and the reasoning used will certainly be condemned unless viewed in the light of these basic principles.

Arbitration is an orderly form of procedure for the settlement of industrial disputes as to wages, hours of labor and other working conditions. As a consequence of its use, resort to such weapons as strikes, boycotts, lockouts or blacklists, is obviated. The court or board of arbitration should be composed wholly of persons who do not represent either the employers or the employees; or, if representatives of the two opposing interests are given places on the board, the balance of power must be held by others. In short, the decisions of a board of arbitration are actually made by persons supposed to be neutral in their sympathies and interests. Boards in which the balance of powers does not rest with the neutrals or the representatives of the general public should not be designated as boards of arbitration.

In regard to the subject matter considered, arbitration is of two general types: primary and secondary. The second form deals with disputes arising from the interpretation of the terms of a contract already entered into. Primary arbitration, on the other hand, is concerned with the determination of the condi-

tions of employment,—wages, hours of labor, etc. Again, arbitration may be voluntary or compulsory. If voluntary, the two parties agree to accept the findings of the board. If compulsory, the law provides for the reference of industrial disputes to the board, and provides penalties if the findings of the board are disregarded or if a strike or lockout takes place. Arbitration practically implies the recognition of some form of labor organization. This discussion will be limited to a consideration of compulsory primary arbitration.

The advantages of the policy of settling industrial disputes by means of arbitration are easily presented. Arbitration, successfully employed, means peace in industry instead of war. It prevents strikes, lockouts and boycotts; and business activities may go forward without danger of periodic interruption. The great losses from such interruptions are not incurred; and the friction between employers and employees incident to strikes, boycotts or even the more orderly processes of collective bargaining, is eliminated. A judicial or quasi-judicial determination of controverted points is substituted for the cruder and more direct appeal to the strength of organized labor on the one hand and of organized capital on the other. It may, with a reasonable degree of fitness, be compared with the substitution of court procedure for the feud and the duel.

The defects of the policy of arbitration are more difficult of presentation. More subtle considerations are involved and the clashing of divergent interests and points of view come much more clearly into the foreground.

1. The most serious defect in a system of compulsory arbitration grows out of the absence of any definite and generally accepted standard for the determination of a wage rate. No theory of wages, now formulated, has satisfactorily stood the test of criticism and of practical application in the industrial world; and no board of arbitration has been able to present a scientific standard by means of which disputes as to wage rates may be authoritatively and accurately settled. Consequently, boards of arbitration have as a rule compromised in fixing wage scales. When more than a mere compromise between opposing demands has been attempted, arbitrators have been influenced by a knowledge of what has been paid in the past in the industry under investigation, or what is now being paid in other shops and localities; or they have rested their decision upon the basis of the standard of living by them considered adequate for the wage workers concerned. The first alternative spells fixity,

and will be further discussed under the head of the fourth defect.

The second method cannot be considered scientific so long as no definite concept of the standard of living exists, In fixing railway rates the Interstate Commerce Commission has certain fairly definite items as points of departure, such as the actual investment, the depreciation, market rates of interest, the cost of operation. In the determination of a wage award, the standard of living is such an indefinite concept that difficulties arise which prevent any scientific award. Some of the problems are: What is the standard of living? Should it gradually rise as the years go by? Should an allowance be made for the physical deterioration of the worker? Should an allowance be made for insurance against old age, sickness and accident?

A recent dictum of the Ohio industrial commission throws an interesting side-light upon the fundamental problems of a board of arbitration. "Exact industrial justice would not take into consideration the demands of the employees or the proposals of employers, but would be determined after a full investigation and inquiry into the cost of production, cost of maintaining a satisfactory standard of living, distribution of profits, and all other such matters." A brief study of this plan will disclose numerous practical difficulties. What is a "satisfactory standard of living?" To whom is it satisfactory? Does cost of production include a fair profit? And what is a "fair profit"? From whose point of view is it fair? What would be the proper "distribution of profits"? And, what of "all other such matters"? Since almost all industrial disputes directly or indirectly touch the question of wages, obviously, the first and foremost defect of arbitration offers almost unsurmountable obstacles in the present state of the science of economics. It will certainly be difficult to apply the much-discussed "rule of reason."

2. The substitution of arbitration for the strike, boycott or the trade agreement in the settlement of industrial disputes will tend to weaken organized labor or at least greatly to modify the form and programs of such organizations. The reason for this consequence is not difficult of discernment. Labor organizations have been formed to obtain by means of collective bargaining or militant activities, higher wages, a shorter working day or some other improvement in working conditions. Unionists are loyal to the union and cheerfully pay dues only when they believe that the organization is a potent instrumentality to assist them in obtaining their demands. If arbitration becomes

the accepted method of determining the wage rate, the necessity for the union becomes less clear to the average unionist. The resort to arbitration will not stimulate self-reliance and self-assertion among the workers. Of course, from certain points of view this seems an advantage rather than a defect. In a personal letter, the editor of a well-known labor journal questions whether arbitration "has been of much practical value in giving the workers those opportunities for self-assertion" which are "necessary for their welfare if they are to take an active part in the determination of what their terms of employment and conditions of labor will be."

3. Arbitration involves the intervention of a third party. The members of a board of arbitration who are supposed to be neutral and to represent the public, as a rule, are not familiar with the conditions in the industry. This fact adds to the difficulties in formulating a scientific judgment which will stand the test of rigorous criticism; and it does not inspire either side with confidence in boards of arbitration. Wage workers naturally hesitate to place the determination of matters which vitally touch their chief business in life in the hands of outsiders more or less ignorant of conditions in the industry and also of their point of view.

4. The procedure of a board of arbitration resembles that of a court; it is judicial in its methods. Therefore, precedent plays a large part in the deliberation of a board of arbitration. Since labor is struggling upward toward a higher standard of living and toward higher social standards, labor organizations look with suspicion upon any institution or method of procedure in which precedent plays a considerable role. Precedent for wage workers spells slavery, serfdom or low standards of living and social inferiority. Laboring men and women are struggling to get out of the "servant" class. They want to be recognized as "equals" of their employers and the managers of the business in which they are earning a living. Wage workers are eagerly looking forward to the day when labor as well as capital shall have a voice in determining the conditions in industry, to the time when the representatives of the employees shall be admitted to the meetings of the boards of directors. Compulsory arbitration would seem to offer little opportunity to press forward along this line.

Again, in case no definite legal principles can be invoked, the decisions of the board depend in no small measure upon the training, interests, and idiosyncracies of the judge or umpire. It has been noted that no fundamental principles which are of

general acceptance can be laid down for the guidance of boards of arbitration. Consequently, there is reason for the assertion made by labor leaders that the decisions of boards of arbitration depend upon the personal bias and the preconceived notions of the arbitrators. In the event of the adoption of compulsory arbitration in this country, the choice of arbitrators or of those officials whose duty it would be to make such selection, would inevitably become a political issue. And, further, political considerations would become determining factors in the rigid or the flabby enforcement of the law.

5. The decisions of a board of arbitration, particularly when adverse to the workers, are difficult of enforcement. It might involve the necessity of penalizing large numbers of citizens.

6. Except in a few basic or quasi-public industries, a law providing for compulsory arbitration would probably be held unconstitutional.

An incidental weakness or defect of arbitration is due to the lack of a consistent policy for or against it on the part of both employers and wage workers. Neither employers nor employees at all times and under all circumstances take the same attitude toward arbitration. In some cases, unionists demand arbitration; again they reject such proposals. Likewise, employers sometimes favor arbitration, and again, they contemptuously reject it. Employers usually stand for arbitration in industries when the unions are strong as in the railway industry. But in other industries where organized labor is weak or has been eliminated, the employers insist upon their right to run their business without interference.

The United States Steel Corporation has not attracted much attention as an advocate of voluntary or compulsory arbitration in its own plants; and the copper companies of northern Michigan are not well-known friends of these measures. Less than half a decade ago, the president of a New York City street railway company sternly informed the employees of the company that they were his servants and that he expected them to do his bidding. "Arbitration between my servants and me is impossible." How different was the attitude of the steam railway presidents in 1916! On the other hand, the anthracite coal miners in 1902 were quite willing to arbitrate their differences with the operators; but, in 1916, the railway brotherhoods rejected arbitration. The progress of compulsory arbitration in Australasia in recent years is partially due to "the demand of employers for protection against most powerful unions." But the first law passed in New Zealand in 1894, was favored by

the union men of the island and opposed by the employers.

No scheme for the adjustment of industrial disputes is without defects; but, in the opinion of the writer, the defects of compulsory arbitration outweigh its advantages. Nevertheless, in view of the rapid growth in numbers and importance of industries affected with unmistakable public interest, it seems quite probable that unless employers and organized labor can settle their differences by collective bargaining and trade agreements or in some other manner not requiring resort to industrial warfare and chaos, compulsory arbitration with its defects and its advantages or a system similar to that being tried in Canada, will be adopted as the legal remedy. In case of a great strike tying up, for example, a large railway system or the coal industry the demand for industrial peace will become so insistent that some legislative remedy or palliative will be enacted.

If this diagnosis of the situation be fairly accurate, the following conclusions may be offered. Associations of employers and unions of wage workers must face the welcome or unwelcome indications that if they cannot compromise their differences by collective bargaining and thus avoid industrial warfare, legal coercion will be used to adjust the matter according to the findings of boards in which the balance of power is held by men from the outside appointed by public officials. The law court system of adjusting personal and group disputes and quarrels is by no means perfect; but very few individuals favor a return to the medieval system of settlement by personal combat and feudal warfare. If organizations of wage workers and of employers cannot bring about industrial peace, they must suffer the consequences whatever such consequences may be. It is, however, by no means certain that compulsory arbitration will achieve industrial peace. It has not in New Zealand or in New South Wales. Because of the political weakness of organized labor in the United States, the drafting and the enforcement of compulsory arbitration laws will doubtless, as a rule, be under the control of persons not recognized as friends of organized labor. Under such circumstances it may not be anticipated that this legislation will be very distasteful to the business interests of the nation.

THE RAILROAD HOURS OF LABOR LAW

By Charles R. Van Hise,
President, University of Wisconsin

Annals. January 1917

In this discussion I represent neither capital nor union, but merely the part of the people of the United States that too often have been disregarded by both—the public.

I am in favor of the organization of capital whenever capital carries on its enterprises with due consideration for the welfare of the people. I have always been strongly in favor of the organization of labor; and I am now in favor of supporting the unions whenever they push their own interests with due consideration for the interests of the public.

As a background for the discussion it is necessary to consider for a moment the exceptional situation which exists for the public utilities. It is now generally recognized that the public utilities, and particularly the railroads, are subject to regulation through commission so far as the managements are concerned. The movement for their control was most strenuously resisted by the managers. Indeed they insisted that their business was a private one which they should handle as they pleased, but the public by sheer force imposed control upon them despite their most desperate resistance.

At the present time not only the right but the imperative necessity for public control of the railroads is recognized by all.

But it is to be noted that regulation only concerns the management. There is no public control in any manner whatsoever of the employes. Thus far the control has been one-sided.

In the early railroad controversies between managers and employes, the managers were the stronger. The bargaining was individual, or it concerned a division, or at most a railroad system. Under these conditions not infrequently the managers would refuse to arbitrate; and, if they did consent to do so, it was with the greatest reluctance. However, the local unions gradually recognized the increasing power given them by cooperation, and in 1902 began the concerted movement under which a union made demands upon the employers for an entire district. The increased power of the unions given by the concerted movement, when once appreciated, led them to a number of such movements within a few years. Each of these was confined to one union but extended over a large section of the country. This may be illustrated by the engineers' concerted

movement of 1912 for the northeastern part of the United States. Such a movement gave the unions equal or greater power with the managers; and then the managers were ready to arbitrate, and the unions were somewhat hesitant.

Finally in the spring of the present year a concerted movement of the four powerful unions operating trains—locomotive engineers, firemen, conductors, and trainmen—for the entire United States was organized and demands made upon the managers. Under these circumstances the power of the unions was far greater than that of the managers; and consequently the managers were ready to arbitrate and the unions would not agree to do so.

History shows that between the two there is no choice. When the employers were in the saddle they gave little heed to the public except as they were compelled to do so. Now that the unions are in the saddle they have begun to use their power in precisely the same manner as did the managers, giving no heed to the public. The question now is: will the unions pursue this policy until compelled to give such consideration, or will they be wise enough, knowing the history in regard to the managers, to steer a better course?

In the controversy under discussion the unions demanded (1) an eight-hour basis for the hundred mile run instead of the ten-hour basis, (2) time and a half for overtime, and (3) the retention of all present advantages. After the managers had agreed to arbitrate and the unions refused to arbitrate, President Wilson proposed, on August 15, 1916, that the railroads grant the eight-hour day and that the workers abandon the demand for time and a half for overtime.

It is not now possible to discuss the merits of either of these proposals. I merely wish to point out that the demand for the eight-hour day is not what it appears to be. The division points on the railroad have been arranged upon the basis of the hundred mile run as the day's work, controlled, however, to a considerable extent by the large centers which necessarily are terminals. By act of Congress the position of the terminals cannot be changed, and the basis of the day must remain the hundred mile run.

Already it has been recognized in the passenger service that five hours is a reasonable time in which to run one hundred miles, and the men get overtime if more than five hours are used. The question in the case of the freight service is whether or not eight hours is a reasonable time in which upon the average to make one hundred miles. In this connection it should be

recalled that the harder service involved by the powerful locomotives and heavy freight trains is recognized by variable compensations in proportion to the character of the engine, and is greater per mile run than in the passenger service. A law requiring the men operating the trains to cease work after eight hours is wholly impracticable.

Since this is so, to call the Adamson law an eight-hour day law is a misnomer. If eight hours is a reasonable time in which to make one hundred miles in the freight service, then overtime should be paid after eight hours; if not, it should not be paid. This is a question so exceedingly complicated and involves so many factors that it would be folly on my part to give an opinion concerning its merits without a most exhaustive investigation.

However, under threat of strike, with the recommendation of the President, Congress in four days passed a law, which was signed by the President September 3, 1916, making eight hours the basis of the day's work and at the same time disregarded another recommendation of the President that the law should be amended along the lines of the Canadian Industrial Disputes Act.

The additional cost of operating the railroads due to the law, estimated at many millions of dollars, now passes on to the public. Under regulation the railroads are limited to reasonable charges by the Interstate Commerce Commission. Any great increase in the cost of operating the roads sooner or later passes on to the public. Only recently a 5 per cent. advance in freight rates has been authorized. The public must pay the additional millions, because of the Adamson law, in advance of its being ascertained whether or not it should take the burden. The claims of the men may have been just or unjust. I pass no opinion upon them. If the claims were just, why not have had an investigation by an impartial tribunal in which the public, the managers, and the employes were represented? If they were just, the demands would have been granted; and if they were unjust, they would have been denied, and the public would not have been mulcted of a great sum of money. However this is a trivial matter as compared with the precedent which has been set.

We have a situation new in this country in which the unions tell the government what laws shall be passed and it meekly obeys.

The principle has been yielded that 400,000 men can refuse to have their cause investigated and adjudicated, threaten strike, and secure legislation, thus holding up 100,000,000 people.

As one of the 100,000,000, I enter my most earnest protest against this surrender of the government. The unions are now encouraged by their success. What is to prevent them two years hence or four years hence, when an election is pending from demanding of a timid government that they receive time and a half for overtime, without any adjudication of the merits of the question?

But suppose the strike had been called and it had been successful, what would be the situation? In the United States there is one city, New York, with over 5,000,000 population; one city, Chicago, with more than 2,000,000; one, Philadelphia, with more than 1,500,000; there are five cities, St. Louis, Boston, Cleveland, Baltimore and Pittsburgh, with more than 500,000 population; and eleven cities, Detroit, Buffalo, San Francisco, Milwaukee, Cincinnati, Newark, New Orleans, Washington, Los Angeles, Minneapolis, and Jersey City, with more than 250,000.

No other country in the world possesses so many large cities; just as there is no other country which approximates ours in railroad mileage. One is a function of the other; neither could exist alone. Large cities are one of the consequences of the modern industrial system. In ancient times there were no cities comparable in magnitude even to those of Chicago or Philadelphia, much less that of New York, for the simple reason that the people could not have been fed. Only by the continuous operation of the railroads can the people in the great cities secure food.

If a railway strike was declared and it was successful, the babies would begin to suffer for milk in a day; the perishable foods would be scanty in a week; and before a month had gone by the people would be in want for the very necessities of life.

If the operation of the trains ceased for any considerable time the greater number of the manufacturies would be obliged to discontinue, both because they could not secure supplies and could not sell their products. The financial losses would be incalculable, to be reckoned as the lowest unit, in hundreds of millions of dollars. Hundreds of thousands of laborers would be out of employment; and they would not have the money to purchase food even if it were obtainable.

The loss of life would be worst among the families of laboring men and especially the babies. The well-to-do would be able to purchase at high prices the scanty foods obtainable; and the rich, while they might suffer financial loss, would endure no hardship. The unions would be responsible not only for the paralysis of the trade and industry of the country but for the

death of perhaps hundreds and the misery of millions of people less fortunate in compensation and in position than the men of the unions. The disaster to the nation would be far beyond my power to conceive or describe.

If the tremendous responsibility of a general railway strike is once appreciated by the men of the unions, I have a better opinion of them than to believe that they will ever bring dire disaster upon the country simply to advance their own selfish interests. They would unite with the public in finding a solution of the problem which will make a railroad strike in the future an impossibility. If they refuse to do this it will be necessary, just as it was with the managers, to force control upon them. The railroads must be continuously operated. Some other way must be found than by strike or lockout to settle the differences between the managers and employees for the public utilities.

If the question ever goes to an issue, there can be no doubt of the result. President Wheeler, of the University of California, in his first address as exchange professor at the University of Berlin, said "In America, the ultimate source of authority is public opinion." Either managers or employees who refuse to recognize the power of this public opinion when united would be crushed. If public opinion were once united, as it would be if a strike were called, there would be a power which Congress would fear even more than it fears the unions.

What, then, is the line of progress? This is the question which deeply concerns us. The answer must rest upon the principle that the interest of the public in the operation of the railroads is paramount, and that the interest of the managers and unions are strictly subordinate. To this paramount interest both must submit. An intolerable situation exists so long as any group or groups of men, whether managers or union, can halt the continuous operation of the trains.

We now turn for a moment to the experience of other countries to assist us in finding a way. In 1910 a general railway strike was called in France; and the conditions above described threatened that country. Minister Aristide Briand immediately, under the authority of military law, commanded the mobilization of the strikers for three weeks of military training. The military duty to which they were summoned was running the trains. Disobedience would entail punishment under military law. The strike was broken in six days.

Later, in discussing the matter, Briand declared "that public servants must be required to discharge their duties regularly and

without interruption." Indeed he regarded the operation of the railroads as so imperative that he declared:

"If the government had not found that the law enabled it to remain master of the frontiers of France, and master of its railways, which are indispensable instruments of the national defense; if, in a word, the government had found it necessary to resort to illegality, it would have done so."

This he regarded as defensible under the doctrine of Salus publica suprema lex. Briand, at this most critical time in the history of France, is Prime Minister of that country.

In Germany, so clearly recognized is the public interest in the operation of the trains that unionism is not allowed on the railroads, although recognized as legitimate in private industry. In New Zealand, strikes and lockouts are illegal altogether until a hearing is held before a court of arbitration and recommendations made. The law is so operated that lockouts and strikes have practically ceased. In Australia is a conciliation and arbitration act with provisions similar to those of New Zealand, providing for compulsory arbitration in all labor disputes. In Canada strikes and lockouts are illegal until a board of conciliation has investigated the facts and made recommendations for the settlement of the dispute. In operation, this law has greatly reduced the number of important strikes, because either side failing to accept the recommendations of the board has a unanimous public sentiment against it. South Africa has a law for preventing strikes and lockouts similar to that of Canada.

The facts cited show how far the United States are behind many other countries in the machinery to control emergencies such as arose last autumn.

In this country we have only the Newlands Act which furnishes mediation and arbitration provided both sides agree. I cannot now go into the details of the law. Its impotency in an emergency has been shown. As a minimum step this law should be amended along the line of the Canadian Industrial Disputes Act, so as to compel investigation and recommendations by a tribunal in which the public is represented before a strike can be declared upon the railroads. It is probable that in any given case, if such a law were in force, so that public opinion could be crystallized by an investigation and recommendations of the board, neither side would dare disregard those recommendations.

If Congress does not pass the measures suggested or some other, with similar purposes, if it makes no attempt to remedy the situation, and the country is left in a position in which it

may again be held up, that body will be indeed recreant to its trust.

I have no doubt the courts will maintain that compliance with the law proposed is not "involuntary servitude." The public interest in the operation of the railroads is so dominating that the same principles are applicable that have been held to apply in the case of the Seamen's Act and in regard to quitting trains between terminals. A strike in the railway service is of such momentous consequence to the public that the right of concerted action to discontinue service must be qualified.

However, even if the measure proposed be enacted into law, it is not a final solution of the problem under discussion. There is only one final solution of that problem and that is to carry the principle of regulation to its logical conclusion.

At the beginning of my paper I pointed out that regulation has been accepted as a public policy both national and state so far as the managers are concerned. The principle should be carried to the employees as well. A commission should be granted the power to fix wages for public utilities. I do not care whether there be created a separate wage commission or there be added a branch to the Interstate Commerce Commission for this purpose. There would be some advantages in having a separate commission; for then there would be one body concerned primarily with rates and another concerned primarily with wages. Much of the statistical investigation which is necessary for one may be used by the other; and there could be a central organized bureau of experts and statisticians who would be continually collecting information for both.

Why is the proposed law logical? Why is it necessary? Because if the public interest is paramount in the operation of public utilities, then the rates allowed to be charged decide what the railroads can pay in wages. The railroads should be allowed to charge rates which give a fair dividend and no more upon the stock, pay the interest on the bonds, and pay a just wage not to one group of employes, but to all groups. A wage commission would not raise the pay of the highest paid group and, by indirection, hold horizontal or depress the pay of the poorest paid group.

The proposed amendment of the Newlands Act, while it might prevent strikes and lockouts and so avoid the greatest injury to the public, would not remedy the defect of an unjust scale of wages. It would not put the employees of the railroad upon an equal basis. If, however, there were a wage commission which at all times was studying the question of the proper relative

wages of the different employees of the railroads and in relation to the wages that are paid in other industries, if it could study the question with relation to times of prosperity and times of stagnation, such a commission would be better able to determine what is a fair wage for each class of employees than are the managers or are the men.

We cannot expect the men to surrender the right to strike unless there be provided some measure which will give them fair wages and proper conditions of service; and, therefore, if the right to strike is to be curtailed it must be accompanied by some law which will insure fair treatment; and this can only be accomplished through a wage commission.

My remedies, therefore, for the existing railroad situation are, first alleviation:—amend the Newlands Act so as to prohibit a railway strike until after an investigation of the controversy and recommendations concerning its settlement; and, secondly, as a final solution, the creation of a wage commission either as a branch of the Interstate Commerce Commission or independent of it to handle wages for the railroads.

I do profoundly hope that the present Congress will enact legislation to rescue the country from its present humiliating situation. There can scarcely be a doubt that every foreign civilized nation was amazed that the United States, which is regarded at this time as the one great neutral nation which must exercise vast moral power upon the belligerents in the settlement of the world war, has so weak and feeble a government that it cannot handle an economic problem which concerned a small group of its own people. I can scarcely think of our position before the civilized people of the world without my cheeks becoming hot with shame. I hope that we may escape from further ignominy, and that never shall a situation recur in which the government of the United States surrenders to a minority insignificant in numbers.

TRIAL BY JURY

By Elisha Lee,

Assistant General Manager of the Pennsylvania Railroad.

The Independent, Jan. 22, 1917

Several years ago, when we had to adjust a wage controversy with the engineers on our eastern roads, a very distinguished board of arbitrators, in settling our differences, pointed out the

dangers inherent in attempting to settle railroad industrial disputes by resort to the strike.

This board said: "From the point of view of the public it is an intolerable situation when any group of men, whether employees or employers, whether large or small, have the power to decide that a great section of the country shall undergo a great loss of life, unspeakable suffering and loss of property beyond the power of description through the stoppage of necessary public service. This, however, is the situation that contronts us as a nation."

It was the opinion of this board that "the public utilities of the nation are of such fundamental importance to the whole people that their operation must not be interrupted, and means must be worked out which will guarantee this result."

That situation, so vividly portrayed, still confronts us as a nation. It confronted us in that crucial week in August when the president told the country "This situation must never be allowed to arise again."

The remedy proposed by the president is that "a full public investigation of the merits of every dispute shall be instituted and completed before a strike or lockout may lawfully be attempted."

This, in essence, is compulsory investigation rather than compulsory arbitration—restricting the right to strike or lockout pending an investigation, but in no way restricting the right of the parties in the controversy to fight it out afterward should they refuse to accept the recommendations of the board.

It seems clear to me that a differentiation between private industrial warfare and public industrial warfare such as a railroad strike is essential to any intelligent understanding of the question at issue. Private industrial warfare, in other words, need not here be considered at all. The situation is different. The premises are different. The conclusions must be different. This fact is reflected, of course, in the very law proposed by the president in that it is concerned only with interstate commerce.

When we were in Washington, we heard the chief spokesmen for several million organized workers warn congress that any law restricting the right to strike would be fought by the workers he represented. Mr. Gompers, in speaking before the senate committee, placed in the record, as the view of organized labor, the dissenting opinion of the late Justice Harlan in an admiralty case, in which the principles of human liberty as guaranteed by the constitution were most clearly and forcibly laid down. "The supreme law of the land," said the Justice, "now declares that

involuntary servitude, except as a punishment for a crime, shall not exist anywhere in the land."

But Justice Harlan, in the same opinion, pointed out that "involuntary service rendered for the public, pursuant as well to the requirements of a statute as to a previous voluntary engagement, is not in any legal sense, either slavery or involuntary servitude." He was referring particularly to service in the army and navy. But is not service rendered in interstate commerce likewise a public service? Has not the nation the right to say to the railroad workers, as suggested by the President, "You must not interrupt the national life without consulting us?"

The threat of a nation-wide stoppage of railroad traffic, that would strike at the very heart of our national existence, found the country unprepared to defend itself, and it brought home to everybody the necessity of finding a means of safeguarding the economic life of the whole country against the possibility of internal industrial warfare.

This is a problem that must be solved, and in its solution we must keep clearly in mind the rights and duties of all the parties at interest. The problem, it seems to me, is but another phase of the centuries-old conflict between private rights and public duties.

Railroad regulation has been an evolution. Our railroads grew up in an age when enterprise, initiative and energetic business ability had unrestricted opportunity for development. Unlike the railroads of Europe they preceded population and took the risks of pioneers in developing the country and settling it. In the early days we were too busy building the railroads to think much about regulation. But when the whole country became gridironed with steel rails and steam transportation became an integral part of the life of the nation, there developed our modern conception of the public character of these arteries of commerce and of the need of constructive regulation in the public interest.

The mandate of the people, through acts of Congress and decisions of the courts, is that the railroads must be continuously operated in the public interest—the public interest is greater than that of the individuals who own these properties, or of the individuals who earn their livelihood in the operation of them. And when the private rights of the railroads have come into conflict with their public duties, the public, through the courts, has declared that public duties are greater than private rights. To the railroads the public says: "You must operate continuously, under such regulation as we provide, and

under such tariffs as we approve." Yet, to the two million of our citizens who are actually engaged in this public service—and without whom it could not be conducted—the public has neglected to issue any instructions. It has failed, in other words, to mark the difference between the private rights and the public duties of the employees.

The unfortunate controversy of last August brought vividly before the country the weakness of a system of public regulation of railroads, which fails to provide insurance against a paralysis of the internal commerce of the nation. The crisis came. The President felt compelled to intervene in the public interest. And when he attempted to intervene he found that the existing machinery of voluntary arbitration was inadequate to avert the threatened trouble.

It may, indeed, fairly be asked, Is not this unrestricted right of the railroad employees to quit work in a body a menace to the public welfare? Does not the individual who chooses to earn his livelihood in the public service of transportation assume a duty to help keep open these vital arteries of commerce—a duty greater than the private right to strike?

A member of the Interstate Commerce Commission, Judge Clements, recently exprest the opinion that railroad employees are affected with a public interest that they can no more ignore than can the carriers, and he suggested that there should be a legally established obligation upon these employees not to interrupt the service by strike until the justice of their demands has been determined by some public tribunal. Such a definition by law of the public duties of railroad employees must have been in the mind of the President when he told a gathering of business men recently that "the business of government is to see that no other organization is as strong as itself; to see that no body or group of men, no matter what their individual interest is, may come into competition with the authority of society itself."

"America is never going to say to any individual," the President declared, " 'You must work whether you want to or not,' but it is privileged to say to an organization of persons 'You must not interrupt the national life without consulting us.' "

If the all-embracing commerce power under the Constitution covers railroad wages as well as railroad rates, then the way is open for Congress to turn the whole problem of railroad wages over to the Interstate Commerce Commission, or, as has been proposed by eminent publicists, to an Interstate Wage Commission, working in cooperation with the Commerce Com-

mission. It may be that something such as this will be the ultimate solution of the railroad wage problem—regulation of wages by the same government commission, or an ancillary one, that regulates railroad rates.

When it is considered that nearly two-thirds of the cost of railroad operation is the wage bill, it is seen how closely related are the considerations of railroad rates and the amount of the wages which the company must pay to its employees.

No matter what remedy is finally adopted by Congress for safeguarding the nation against the sudden interruption of interstate commerce, there are many strong advocates of a plan for continuous oversight of railroad labor conditions by a permanent body of expert commissioners—men of the same high attainments and integrity as the men who make up the Interstate Commerce Commission.

We are at the parting of the ways. One road before us is a continuation of the system of unrestricted private wage bargaining that eventually leads to settlement by force. The other road is a restriction and regulation of private wage bargaining in order to give fuller protection to the rights of the public—trial by jury instead of trial by brute force.

This is a problem in which all of us, as American citizens, have a vital interest. I have endeavored to state the facts without prejudice. I am not an advocate of any particular plan, but I am an advocate of industrial peace—not peace at any price, but peace that will insure the best possible wages and working conditions for our employees together with the highest efficiency in the operation of our transportation systems.

There must be, as President Wilson has so well said, "a full and scrupulous regard for the interest and liberties of all concerned."

I am in favor of an investigation, rather than an inquest. I believe there should be an inquiry by some properly constituted tribunal into the facts of a wage dispute before there is any resort to force, rather than an inquest after the trouble has been made and the damage done, to learn the causes of the disaster.

I am not prepared to say that all wage problems on the railroads should be placed unreservedly in the control of a public commission, but I do believe that when a controversy between the managements and the men reaches a stage where the interests of the public are imperiled, that then there should be a peaceful settlement and a judicial settlement, that will conserve the public interest as well as the rights of the parties to the controversy, and if it is finally determined that any body of men

be required in the public interest to subordinate their private rights to their public duties, it should be with the full understanding that their private rights must be in every way safeguarded by the public.

COMPULSORY ARBITRATION IN THE UNITED STATES

Cornelius J. Doyle, Esq.,
Greenfield, Ill.

Annals, Sept. 1910.

In this age of organization, with gigantic combinations of capital on the one hand and powerful associations of labor on the other, the attainment of industrial peace is an idea deserving and commanding the best thought of the time. The study of industrial problems is being forced more and more on statesmen and educators, leaders of public thought and moulders of public opinion. At the outset, let me say that in my opinion there is no royal road to industrial peace, unless we discover a method to change human nature. In spite of any laws that we may enact, or any machinery that we may devise to aid in the settlement of industrial disputes, we still shall have strikes. That perhaps is well, for while we may deplore strikes and bitter conflicts between employer and employees, the absolute prohibition of such conflicts would, in my judgment, create a condition of serfdom and oppression more dangerous to society than our present industrial disturbances.

Efforts to deal with these industrial conflicts by legislation began upward of a century ago. The original attempts were primitive in character, suited to conditions existing at that time, but they embodied some of the ideas in effect today and aimed to protect the worker from economic injustice. As labor organizations grew in strength and influence, multiplying the number of strikes and lockouts, so did the machinery for dealing with them develop, until today we have arbitration and conciliation laws in almost every country and in almost every state in the United States. These laws differ in scope and vary in degrees of effectiveness but all aim at the same goal, the harmonizing of the interests of the employers and employees, so that a third party, known as the public, may be injured or inconvenienced as little as possible.

The particular law with which I have chiefly to deal here is the law of "Compulsory Arbitration". I shall endeavor to point out some of the advantages and disadvantages of compulsory

arbitration and, so far as I am able, show whether it would be effective in preventing strikes and lockouts in the United States.

The first compulsory arbitration law was enacted in New Zealand in 1891, following a disastrous series of strikes which paralyzed the industries of that country. It was enacted on the theory that where the public interests are affected, neither an employer nor an employee is absolutely a free agent and that personal liberty ceases to be liberty when it interferes with the general well-being of society. In other words, the parliament of New Zealand decided that the rights of the masses were paramount to the rights of any particular classes. When the law was passed, it was hailed by idealists as the acme of industrial legislation. The "country without strikes" became almost a household word and the eyes of other countries turned toward the antipodes to watch the result of its experiment in dealing with its industrial problems. Other countries of Australasia took up the consideration of the problem and later compulsory arbitration laws patterned after the New Zealand law were enacted in New South Wales and West Australia.

The success of the experiment of Australasia with its compulsory arbitration laws is open to conflicting opinions. Advocates of the law assert that the country has greatly prospered, which is undoubtdly true. The fact should not be overlooked, however, that since the passage of the laws in the country affected, there has been a steady upward tendency in prices, and wages and strikes are uncommon on a rising market in any country, for the reason that employers are more ready to accede to demands. The real test of arbitration laws comes on a falling market when the employer wants to reduce wages, and I have rarely known a case where organized workmen will accept a reduction in wages without a fight, no matter what laws may be on statute books.

If we look at compulsory arbitration as a means of preventing strikes and lockouts by absolutely declaring them illegal, we are bound to admit that the Australasian laws have been failures. They have not prevented strikes or lockouts absolutely, though they may have reduced them in number and extent. Numerous strikes have taken place in these countries since the adoption of the laws, some of which have been quite serious in effect, while the enforcement of the penalties in the laws has been found difficult if not impossible.

Recent newspaper dispatches from Sydney, New South Wales, state that business is so demoralized by reason of a strike of

coal miners that a bill has been passed rendering labor leaders or employers who instigate or aid in a strike or lockout, liable to a year's imprisonment. Reduced to its final analysis that must be the ultimate end of any compulsory arbitration law—work on the conditions prescribed, or go to jail. It is doubtful if even the drastic threat of a jail sentence will compel a workman to continue at work under conditions which he regards as intolerable, and it is equally doubtful if any threatened punishment will compel an employer to operate his business unless he can see a reasonable profit in so doing. An award which increases the labor cost beyond what the industry can successfully carry is confiscatory and an employer cannot accept it and remain in the business. This was shown in Australasia in the case of the shoe manufacturers, who closed down their establishments and declared that they would import shoes from Europe and America, rather than attempt to operate their factories and pay the wages set by the arbitration court.

In spite of its experiences, however, Australasia does not want to repeal its arbitration laws. The New South Wales law was passed in 1901 for a period of seven years and in 1908 it was re-enacted at the end of this experimental period. New Zealand endeavored to strengthen its original law by providing machinery for the better enforcement of the awards, so it would appear that the idea of compulsory arbitration has met with favor in the eyes of a majority of the people in the land of its origin.

There is one point in consideration with the Australasian laws which I regard as rather significant. The last report for Western Australia for the year ending June 30, 1909, shows that joint trade agreements were taking the place of awards of arbitration courts. These contracts are termed "Industrial Agreements", and are enforceable by the Court of Arbitration. They are entered into voluntarily by employers and employees as are joint trade agreements in this country. Mr. Edgar T. Owen, Registrar of Friendly Societies, in his report dated August 14, 1909, says: "It will be observed that the unions which have made industrial agreements in lieu of awards of the court for settlement of their disputes contain 7,524 out of a total membership of all unions of 15,596".

The point I desire to emphasize is that in West Australia, as shown by the report referred to, workmen and employers are making their own agreements instead of having the Arbitration Court make them. The same report shows that while there were 168 disputes referred to the arbitration court from 1901

to 1904, there were three disputes referred to it in 1907 and twelve disputes in 1908. That certainly does not seem to argue for the popularity of the Arbitration Court, and taken in conjunction with the increase in the number of industrial agreements, indicates clearly to my mind that employers and workingmen in West Australia are turning to the joint trade agreement as the better method of adjusting differences.

As has been stated, the New Zealand law was enacted at a time when the public was exasperated as the result of a series of prolonged strikes. It was not favored by either employers or employees. For a time neither side took advantage of the law, until a union which was worsted in a strike, decided to register so that it might have an additional weapon in the case of another dispute. When the next dispute did arise, the employers ignored the court and an award was returned against them. The award was enforced by fines and eventually employers began to realize that the new law was not to be trifled with or ignored.

New Zealand trade unions are made the basis for compulsory arbitration. The workmen must belong to a duly registered union before they can appeal to the court. That presents rather an anomaly, compelling workmen to organize and then depriving them of the right to exercise the function of organization by quitting work collectively if they are dissatisfied with their conditions. I have dealt at some length with the Australasian laws because a study of compulsory arbitration laws in operation is of infinitely more value than mere theorizing on how such laws might operate if tried in some other country. Let us see how such laws would apply in the United States.

In the first place, the successful operation of a law depends on the state of mind of the people in the country or locality where it operates. If there is a popular demand for a law, it is easily enforceable and will probably accomplish the ends aimed at. If there is no such popular demand, or if popular sentiment is against a law, it is very apt to become a dead letter and its enforcement an impossibility. Aside from the question of whether compulsory arbitration laws would not be in violation of the constitution of the United States, in that their enforcement would entail involuntary servitude, there is no demand for such laws in our country. The conditions in the United States and Australasia are as different as the countries are widely separated. In Australasia the tendency is toward state control in everything. Individual rights are regarded as being entirely subservient to the rights of the people as a whole. In the United

States, the opposite is true. Here we are extremely jealous of individual rights and liberties and we resent governmental interference with what we regard as our private affairs. It is not the question whether we are right in the position or not, it is the fact that we must reckon with it.

The experience of Australia with its compulsory arbitration laws has tended to strengthen the opposition to such laws, not only in the United States, but in Great Britain and other countries. In Great Britain the question of compulsory arbitration is placed on the agenda of the Trades Union Congress as regularly as the so-called "Socialist Resolutions" in the convention of our own Federation of Labor, and the majority by which compulsory arbitration is voted down each year shows that the idea is losing rather than gaining ground. In Great Britain it has been advocated by a radical wing of the Socialists, but in the United States even the Socialists are opposed to it.

To the average American the idea of compulsory arbitration, which under certain circumstances means involuntary servitude, is decidedly repugnant to his concept of liberty. Our form of government, which vests in the separate states the right to legislate in all matters within their respective borders, would make the working of compulsory arbitration laws difficult, if not impossible. The federal government might pass a law applying to a few public utility corporations, such as railroads and telegraph companies, which are engaged in interstate commerce, but could not legislate for the great mass of employers and employees. Experience shows that comparatively few of our strikes are directed against public utility corporations, therefore such laws, should they be constitutional and enforceable, would not prevent strikes, except in a limited degree.

I have already referred to the importance of having public sentiment on the side of any law to make it effective, and nowhere is the truth of this more observable than in the arbitration and conciliation laws on the statute books of a large number of our states. We have in Illinois a very good law dealing with industrial disputes. To the extent that the arbitration board can compel the attendance of witnesses and the production of books in a strike which inconveniences the public, it is compulsory and probably goes as far in that direction as it is advisable to go at the present time.

While the Illinois law has been the means of averting many strikes and of adjusting others, our activities under the law have been limited by reason of the fact that many times neither party to the dispute likes the idea of outside interference. The

machinery is there, but in a majority of the cases neither side will invoke lts aid, and it is doubtful to my mind whether they could be forced to do so. They must be educated and led rather than driven.

The compulsory feature of the Illinois law is contained in the following clause:

Whenever there shall exist a strike or lockout wherein, in the opinion of a majority of said board, the general public shall appear likely to suffer injury or inconvenience with respect to food, fuel or light, or the means of communication or transportation, or in any other respect, and neither party to such strike or lockout shall consent to submit the matter or matters in controversy to the State Board of Arbitration in conformity with this act, then the said board, after having made due efforts to effect a settlement thereof by conciliatory means and such efforts having failed, may proceed of its own motion to make an investigation of all facts bearing upon such strike or lockout, and make public its findings, with such recommendations to the parties involved as in its judgment will contribute to a fair and equitable settlement of the differences which constitute the cause of the strike or lockout; and in the prosecution of such inquiry the board shall have the power to issue subpoenas and compel attendance and testimony of witnesses as in other cases.

The section of the law quoted has been in effect since 1901, but it has not been put to a test. It is based on the theory that public opinion is the final arbiter in disputes of a public or quasi-public character, and I believe the theory is correct. Few strikes of a character that would inconvenience the public in the meaning of the law have occurred in Illinois since 1901. In 1903 we had a strike of street car employees in Chicago that doubtless came under the provisions of the law and the members of the board made efforts to settle the strike, but without success, as the company refused to co-operate. The board took the question of an investigation under consideration, but as the city council and other agencies were at work trying to bring about a settlement, which was the question of first importance, the investigation was not started because it might have tended to hinder a settlement and certainly could not have been completed in time to be of much use. The strike lasted about two weeks. In a coal strike in 1906 the board offered its services in a mediatory capacity, but the dispute was of such a nature that no agency would have been effective, as both sides simply agreed to fight it out and get together when they had enough of it. The strike had been anticipated for months and there was a

sufficient supply of coal on hand to insure against any inconvenience to the public. In fact, neither the coal operators nor the miners regarded the dispute as a strike or a lockout, but preferred to term it a suspension.

While I have said that the Illinois law goes as far in the direction of compulsory arbitration as may appear advisable, I believe it could be improved upon in one particular. Instead of providing for an investigation after a strike or lockout has occurred and after the public has been injured, the investigation should be after such strike or lockout has been threatened and there appears no possibility of its being averted without some outside intervention.

The aim of all state boards of conciliation and arbitration is to prevent rather than to settle strikes, and though I am convinced that compulsory arbitration is neither practicable nor advisable in the United States under existing conditions. I believe that compulsory investigation would be desirable in all disputes between public utility corporations and their employees.

It is the hasty, ill-advised strike that causes most of our troubles and at least half of them could be averted if both sides were required to submit to an impartial investigation and give full publicity to the merits of the controversy. After such investigation, the public which is discriminating in such matters where the facts are known would soon end a strike were one to take place. It is doubtful if any corporation or labor union would have the hardihood to fly in the face of an educated, enlightened public opinion and for that reason I believe publicity is the strongest weapon that can be used for the maintenance of industrial peace.

The experience of Canada with its "Industrial Disputes Investigation Act", of 1907, has been most gratifying. Industrial conditions in Canada do not differ materially from those in the United States. The organized workers in both countries belong to the same international unions. The Canadian Act has not prevented strikes in every instance. It was not expected that it would, but in the first year of its operation thirty-two disputes out of thirty-five referred under the law, were satisfactorily adjusted. The number of men involved in the controversies referred to was between 25,000 and 30,000. The actual number of boards constituted under the law during the first year of its operation was twenty. That record proves that the Canadian law is well adapted to present day conditions. The Canadian law was enacted on the recommendation of the deputy minister of labor following a prolonged strike of coal miners, which

caused a coal famine throughout Saskatchewan. Briefly it prohibits any strike or lockout in any industry affecting a public utility until an investigation has been made, and allows a period of thirty days in which to make such investigation.

After the investigation has been completed by an official board created for the particular case and the result of its findings made public, the employer or the union is free to engage in a strike or a lockout if it desires. Of course the board does everything possible to effect an amicable settlement as well as conduct an investigation, and its official report is in the nature of recommendations to one or the other of the parties, or to both. Generally speaking, those recommendations have been accepted without recourse to a strike. Where they have not been and a strike has been called, the same recommendations have sometimes been accepted later to settle the strike. Though the Canadian law does not in every case prevent strikes, it furnishes an easy and sensible method for adjusting industrial disputes if either one side or the other has an honest desire to settle. If they have not there is no law,compulsory or otherwise, that will prevent strikes.

It has been my experience, however, that in a large majority of cases both sides are anxious to avert strikes, if a middle ground can be found and neither one required to forego any principle. In matters pertaining to hours and wages, usually some compromise is possible; in cases where a principle is at stake, it is more difficult. Even then, though it is impossible to arbitrate or compromise on a question regarded by either side as a fundamental principle it frequently is possible by means of intelligent discussion and argument to present a situation in a very different light from that in which it may have been viewed by one side or the other. For that reason, the Canadian law of compulsory arbitration previous to a declaration of war in industries affecting the public utilities, seems to me an admirable one which possesses advantages not possessed by the compulsory arbitration laws of Australasia. No edict of a court will convince either a workingman or an employer that he is wrong and the court is right. If he is open to reason and conviction an intelligent argument may convince him that his position is untenable and he will acquiesce cheerfully, where in the other case he might submit rather than go to jail, but would still be dissatisfied.

Another point that I have observed in my experience is that arbitration awards seldom are satisfactory to either side in an industrial dispute. If both sides agree to accept such award,

they usually do so, but it leaves a bad taste in the mouth of one or the other. On the other hand, agreements entered into voluntarily by both sides usually prove satisfactory. Each side has had a hand in making the contract and accepts it as the best bargain obtainable under the circumstances.

If it is true that awards of voluntary arbitration boards are not usually satisfactory, it would be even more so with compulsory arbitration. If the aim be to establish the greatest amount of harmony between emyloyer and employee, so that the number of strikes and lockouts may be reduced to a minimum, I am convinced that to make compulsory arbitration successful each disputant must have perfect confidence in the arbitration court and an abiding faith that the award will be rendered in a spirit of justice and perfect fairness. That confidence, in my opinion, cannot be inspired where there is compulsion. As we understand arbitration it is the antithesis of compulsion.

In conclusion let me say that, though we realize that in many strikes the innocent third party is made to suffer, I am convinced from a study of the facts that it is better to "bear the ills we have than fly to others we know not of" in the shape of compulsory arbitration.

LEGISLATION CONCERNING THE RAILROAD SERVICE

By Emory R. Johnson, Ph. D., Sc. D.

Annals. January 1917

I am asked to state how the public regards the controversy that has arisen over methods of settling disputes between the railroad companies and their employes. While I think I can speak without bias or partisanship, I of course recognize it to be impossible for any one individual to represent the views of the general public on a complicated, controversial question such as the one under consideration. Indeed, it is probable that the public as a whole has reached no single definite conclusion. Although I shall venture to state what I think is the belief of the public concerning the principles and methods that should be followed in deciding controversies between the men and the managers in the railroad service, it will be understood that in advocating the adoption of remedial measures I can represent the views of only one member of the public.

It will at least afford a starting point and may assist in simplifying the problem under discussion to begin with a statement

of certain principles upon which there may be presumed to be a general agreement on the part of the public.

I am sure the public is of the opinion that for all classes of railroad employees the hours of labor ought to be reasonable, and the wages fair and generous. Organized effort on the part of the employees to secure fair wages and reasonable hours of labor has always met with sympathy on the part of the public.

The railroad companies, it is further agreed, should be permitted to make such charges for their services and to earn such revenues as may be needed to enable the carriers to pay good wags for reasonable hours of service. Individual shippers and local communities, under the stress of competition, will naturally oppose increases in railroad rates and will press for a reduction of transportation charges; and, indeed, the country as a whole, represented by its state and federal railroad commissions, will inquire into the reasonableness of existing and proposed railroad charges; but public opinion as a whole will justify the commissions in allowing the railroads incomes large enough to enable them to deal generously with their employees.

A third principle concerning which the people of the United States are unanimous is that the interests of the public are superior to the interests of either the carriers or their employees. The public intends to deal justly with railroad managers and with their employees. It expects justice in return; and will insist that the welfare of the hundred million people of the United States shall be placed above any temporary advantage or need of either employees or carriers.

It is evident to the public that the transportation service must not be interrupted by any controversy between employers and employed in the railroad service. The public, represented by the Federal Government, can permit neither the railroad managers nor their employees to stop the service of railroad transportation. Not only the welfare but the very life of society is at stake. The railroads must run, else people will starve, anarchy and violence will displace orderly government, and there will ensue what President Wilson has termed a "tragical national calamity." It should be understood that whatever happens the trains must run, and that all the power of the government of the United States will, if necessary, be exercised to that end.

It follows logically from the foregoing conclusion that disputes between railroad companies and their employees must be settled by mediation or arbitration and not by any action of employers or employees that will stop transportation. To quote the words of President Wilson, "There should be firm adherence

* * * to the principle of arbitration in industrial disputes." It is necessary and desirable, as the President states, that the country "take counsel * * * with regard to the best means * * * of securing calm and fair arbitration of all industrial disputes in the days to come." Means and methods are appropriate subjects of debate, but the debate should be only as to means and not as to the necessity of the settlement of controversies without interruption of the railroad service.

The reasons for this will be stated presently, but before stating I will venture the opinion that the majority of the public is agreed upon one other principle, that is, that in so far as possible wages and hours of labor should be adjusted by negotiations between employees and employers; that wages, outside of the government service ought not to be fixed by statute, and that the hours of labor should be established by law only when the safety and health of society and the protection of the weak against the strong make such statutory action clearly necessary. It is, I think, the belief of a majority of the American people that this principle is fundamentally sound; that it is in the interest of the workingman and is promotive of social welfare and progress that men in their organized capacity should continue to negotiate with their employers as to wages and conditions of service. This view, I take it, is held by most leaders of organized labor as well as by other men of responsibility.

The application of the principle that wages and hours of labor should be adjusted by negotiation between employees and employers instead of by statute necessarily involves the broad question of the wisdom or unwisdom of establishing by law a general eight-hour labor day. Many zealous friends of labor are seeking the enactment of laws limiting labor to eight hours a day. The effect of such legislation upon the present and future welfare of wage laborers should be carefully considered. The men who work for wages have, possibly, made more progress in the United States than in any other country. This progress has been greatly promoted by the organization of labor and by negotiation between organized labor and its employers. It is now proposed to fix hours of labor rigidly by law rather than to adjust them by negotiation between the parties in interest. The significance and consequences of this change should be carefully weighed.

The best method to settle differences that arise between employers and employees is by direct negotiations carried on by representatives of the parties in interest. The next best means of disposing of a dispute is by mediation and conciliation by

responsible government officials who act as the representatives of the public. When an adjustment is finally made as a result of mediation, neither party feels that he has sacrificed his vital interests. Arbitration is the next best method of adjusting labor troubles. For many years arbitration has been successfully employed in the adjustment of controversies between the railroads and their employees. The present agency for the peaceful settlement of railway labor disputes can doubtless be improved by making such changes as experience shows to be desirable; but nothing in past experience indicates a failure of arbitration.

The advantages of arbitration were well illustrated in the adjustment of a disagreement that arose between the Southern Pacific Company and its telegraphers represented by the Order of Railroad Telegraphers. The trouble arose at the close of 1906. For a number of years the relations of the railroad company and its telegraphers had been determined by a schedule or agreement. The time came when the employees felt that their wages should be increased and that Sunday labor should be limited to five hours. The employers also desired certain changes made in the "schedule" or agreement with the telegraphers. Under the agreement that had been in force for some time the company was limited to the seniority rule of appointment and promotion of telegraphers and was thus prevented from introducing new blood into the service. The agreement also required the company to select its station agents from the telegraphers having seniority of service, and the company wished greater freedom in the selection of the station agents. The company and the employees, being unable to adjust their differences, agreed to submit the controversy to arbitration. This was the second arbitration under the Erdman Act and I was chosen by the government as the third arbitrator and acted as chairman of the board. The award that resulted from the arbitration gave the employees half-time on Sunday, or, in lieu thereof, a leave of absence on full pay for twenty-six days per annum. The employees were also given an increase in wages of seven and one-half per cent. The company was relieved from the limitations of the seniority rule by which their selection of telegraphers had been restricted, and the company was also permitted to select men who were not telegraphers to serve as agents at the more important stations. Although certain features of the award were contested in the courts, the controversy was, in the end, adjusted practically in accordance with the award of the arbitration board and in a manner that was apparently acceptable to both sides.

There can be no doubt that the public believes that all disputes between railroad employees and employers that cannot be settled by negotiation or conciliation should be decided by arbitration. The public believes arbitration to be right in principle, and that appropriate measures should be taken as soon as practicable to carry out the principle in practice. This may ultimately require the adoption of laws making obligatory the arbitration of controversies in the railway service. Compulsory arbitration may not be necessary in industrial labor disputes, but in the case of the railroads, where an interruption to the service is intolerable, only one or the other of two courses of action seems possible.

One course is to leave arbitration voluntary and optional, as it is at the present time, in which case it should be understood that the government will and must take whatever measures are necessary to prevent either party to a controversy from stopping the service of transportation. The other course, and the one that will probably be adopted as the final solution of the problem, is to make arbitration compulsory in case mediation and conciliation by public officials fail to bring the contestants to a basis of agreement.

During the coming months the country is to give this question serious consideration. Whether the decision will be in favor of compulsory arbitration or in favor of compulsory investigation as a first practicable step towards the final goal it garding the question was admirably stated by Senator New- is too early to predict. The present thought of the country re- lands, the chairman of the joint congressional committee on transportation, which, on the twentieth of November, 1916, began an elaborate investigation into the whole subject of the relationship of the government to the railroads. In outlining the investigation which the committee proposes to make, Senator Newlands stated, among other things:

"As to wages and the hours of labor, it is very evident that under present conditions the only ultimate method of settling a difficulty between a railroad and its employees is a resort to force. And the question is whether a nation pretending to some degree of civilization, which has eliminated the doctrine of force from application to controversies between man and man, and which furnishes judicial tribunals for the settlement of these controversies, and which is now and has been for years endeavoring internationally to secure a system under which the nations of the earth will create similar tribunals for the adjustment of international disputes without resort to force—whether such

a civilized nation can be content to perpetuate the existing condition of things is a subject of profound thought.

"It would seem to be our highest duty to meet this condition and * * * to create some system under which a resort to force, the most barbaric and brutal of processes, can be avoided for the settlement of disputes between great employers and vast bodies of employees."

The most important statement that has thus far been made concerning methods to be adopted to give practical effect to the principle of arbitration as a means of settling disputes between railroad employees and managers is the proposal which the President embodied in the legislative program which he laid before Congress on the twenty-ninth of last April. The President asked Congress to adopt "an amendment of the existing federal statute which provides for the mediation, conciliation and arbitration of such controversies as the present by adding to it a provision that in case the methods of accommodation now provided for should fail, a full public investigation of the merits of every such dispute shall be instituted and completed before a strike or lockout may lawfully be attempted."

This proposal of the President contains the essential principle of the Canadian Industrial Disputes Act which applies not only to railroads but to all public utilities and to the coal and metal mining industries. As stated in a bulletin published by the United States Bureau of Labor:

"In these industries and occupations (in Canada) it is unlawful for employers to lock out their workmen or for employees to strike until an investigation of the causes of the dispute has been made by a government board appointed for this particular case and the board's report has been published. After the investigation is completed and the report made, either party may refuse to accept the findings and start a lockout or a strike. The investigation board usually tries by conciliation to bring the parties to an agreement, so that the functions of the board considerably exceed those of a body appointed solely to procure information."

It was evidently the thought of the President that a full public investigation of the merits of a dispute between railroad managers and employees would disclose a basis of settlement that would be so manifestly just as to cause both parties to accept the findings of the board of investigation. That might uniformly be the result; but such a happy settlement of controversies might not always be accomplished; and there would still be the danger of a strike or lockout.

The President realized that a law providing for compulsory investigation of railway disputes before a strike or lockout can be lawfully declared must also provide against an interruption of the service of transportation, and he recommended as a part of his legislative program, "The lodgment in the hands of the executive of the power, in case of military necessity, to take control of such portions and such rolling stock of the railways of the country as may be required for military use, and to operate them for military purposes with authority to draft into the military service of the United States such train crews and administrative officials as the circumstances require for their safe and efficient use."

To one who views the question from the standpoint of the public interests, it would seem as logical and as imperative that the executive branch of the government should have the power to take over and run the railroads, in order thereby to prevent violence, disorder and starvation as that the government should be authorized to operate railroads "in the case of military necessity" and "as a matter of national defense." It is possible that the President included among "military purposes" such steps as might be necessary to prevent the tying up of the railroads and the consequent public disorder and starvation; but the President took pains to state that "the power conferred in this matter should be carefully and explicitly limited to cases of military necessity."

Should the United States decide to adopt compulsory arbitration it will not mean experimenting with a new and untried method of enforcing the peaceful settlement of railway labor disputes. Compulsory arbitration has been in successful operation for a number of years in New Zealand, New South Wales, Western Australia, and in the Australian Commonwealth. The purposes of the Australian Commonwealth conciliation and arbitration acts of 1904, and subsequent years, as set forth in the acts themselves, are: "To prevent strikes and lockouts; to constitute a federal court of arbitration with power to provide for the amicable settlement of disputes; and failing of such settlement to make an award; to make and enforce agreements between employers and employees; to enable states to refer to it; and to encourage organizations of employers and employees, who may approach the court with disputes."

According to the testimony of two impartial Australian writers:

"On the whole, compulsory arbitration in Australia has been an undoubted success in so far as results can be judged during

the comparatively short time the system has been in operation. In New Zealand, where it has been in vogue longer than anywhere else, the success has been unqualified. True, the strength of the system has never been tested. There has been no decisive struggle between masters and men. But the absence of such a struggle is in itself a sign of efficiency, and of the satisfaction given to both the factors in industrial prosperity. * * * There can be no doubt that compulsory arbitration with its concomitant awards rests on a sound basis."

If, as I have ventured to assert, the public is definitely of the opinion that the public interests are above the interests of the railroad managers or their employees, that disputes in the railroad service, when negotiation and conciliation shall fail, must be settled by peaceful methods, and that the public cannot permit strikes or lockouts to interrupt transportation, then we must conclude that the public will necessarily give the President the power to keep the railroads running. This would be a power of great magnitude; but no greater than, indeed not so great as, the military power of the President.

The mere possession of great power is often sufficient to make its exercise unnecessary. It is altogether probable that, if those who operate the railroads realize that the government can and will, whenever necessary, take over and manage the railroads, they will take no action to prevent the railroads from operating. The employers and the employees in the railroad service owe it to the public to adopt means of settling their disputes without bringing universal distress upon the country; the public, acting through the government, must insist upon the peaceful adjustment of railroad controversies and must adopt the measures necessary to accomplish that end.

THE PRESIDENT ON LABOR DISPUTES

Editorial, Survey, Dec. 9, 1916. Abridged.

That President Wilson is fully aware of organized labor's opposition to any plan designed to curtail its right to strike is shown by the langauge used in his annual message to congress. That he has made up his mind to disregard that opposition is equally evident. The message is devoted chiefly to the questions raised by the railway strike crisis of last August, and on which no action was taken by congress.

The message calls attention to the six recommendations made at that time. These included the enlargement of the Interstate

Commerce Commission, the establishment of the eight-hour day "as the legal basis alike of work and of wages," the creation of a commission to study the effect of the eight-hour day in railway transportation, the approval by congress of the consideration by the Interstate Commerce Commission of an increase in freight rates, the prohibition of strikes on the railways until after an investigation of the controversy has been made and giving the president power in case of military necessity to take over and operate the railroads and to draft employes into service for that purpose.

The president stated that the second and third of these recommendations have been acted on, and the fourth he did not care to urge. The other recommendations, however, were "very earnestly" renewed.

It is the fifth recommendation that has aroused the opposition of all classes of organized labor. This reads as follows:

"An amendment of the existing federal statute which provides for the mediation, conciliation, and arbitration of such controversies as the present by adding to it a provision that, in case the methods of accommodation now provided for should fail, a full public investigation of the merits of every such dispute shall be instituted and completed before a strike or lockout may lawfully be attempted."

In renewing this recommendation the president apparently took cognizance of the objections, raised by spokesmen for labor, to "involuntary servitude", for he said:

"I would hesitate to recommend, and I dare say the congress would hesitate to act upon the suggestion should I make it, that any man in any occupation should be obliged by law to continue in an employment which he desired to leave.

"To pass a law which forbade or prevented the individual workman to leave his work before receiving the approval of society in doing so would be to adopt a new principle into our jurisprudence which I take it for granted we are not prepared to introduce. But the proposal, that the operation of the railways of the country shall not be stopped or interrupted by the concerted action of organized bodies of men until a public investigation shall have been instituted which shall make the whole question at issue plain for the judgment of the opinion of the nation, is not to propose any such principle.

"It is based upon the very different principle that the concerted action of the powerful bodies of men shall not be permitted to stop the industrial processes of the nation, at any rate before the nation shall have had an opportunity to acquaint

itself with the merits of the case as between employe and employer, time to form its opinion upon an impartial statement of the merits, and opportunity to consider all practicable means of conciliation or arbitration."

SECRETARY WILSON'S PLAN TO PREVENT STRIKES

From Editorial, The Survey, June 9, 1917

Incident to the investigation by a special committee of the United States Senate into the facts of the existing street railway strike in the city of Washington Secretary of Labor Wilson has submitted to the committee the draft of a proposed bill providing for a "United States Industrial Adjustment Commission," which shall act as an industrial court for all of the interstate carriers of the country as well as for the street railways of the District of Columbia. This commission would not have power to prevent the dismissal of employes, either individually or collectively, nor the voluntary abandonment of employment by employes, either individually or collectively. In that sense it has not the power to prevent a lockout.

On the other hand, the bill does provide that the commission shall not only investigate industrial disputes involving these common carriers, but it shall pass judgment upon these disputes by the issuance of order of adjustment. Moreover, "such order or orders shall specify the date, to be fixed by the commission, upon which they shall become operative, and shall thereafter have the same force and effect, both upon the employers and the wage-earners concerned, as would a contract made and executed by and between the same parties upon the same subject matter and shall be so construed."

Machinery for the hearing of appeals from these orders is provided, through the federal district courts and circuit courts of appeals, but evasion of the terms of an order through separate agreements between employers and employes is forbidden.

Section 9 of the proposed bill reads:

"That in the adjustment of wages and hours of service affecting wage-earners subject to the provisions of this act, all orders by the commission shall be just and reasonable and shall be based upon a workday of eight hours or less, and the commission may order extra pay for overtime, except that in street car service in the District of Columbia the commission shall have authority to determine the hours of labor. In each order the rates of wages, salaries, or compensation shall be established

for the class or kind of work or labor performed, rather than for a particular individual who may be doing such work at the time the order is made, or subsequent thereto."

The bill was accompanied by a letter from Secretary Wilson to Senator Pittman of Nevada, acting chairman of the Senate investigating committee, suggesting that the measure, "if enacted into law, will prevent srikes and lockouts by removing the motive, make progress possible without the use of such instrumentalities and at the same time conserve the rights and liberties of all persons concerned."

The letter says in part:

"I have been opposed to compulsory arbitration because I did not believe that any man or set of men should be compelled to work for the profit or convenience of any other man or set of men. All other objections are economic and incidental, although some of them are nevertheless serious.

"All progress heretofore made by the wage-workers through their collective activities has been brought about by destroying the equities. To illustrate: The shorter workday has not been obtained by reducing hours of labor from ten to eight per day in every part of the same industry or occupation at the same time. The object has been attained by grasping the opportunity existing in some locality to compel some particular employer or employers to concede a shorter work-day, and then utilizing the accomplishment as a leverage to force similar concessions from other employers. But in the meantime the competitive equality of the employer granting the shorter work-day has been destroyed.

"In any system of arbitration the tendency is toward equalization with the highest existing standard for the workers as the ultimate basis upon which the equality should rest. With a continuing system of arbitration the lowest would in time be brought to an equal standard with the highest. When that point is reached the progress would be extremely slow, because the economic pressure would have to be sufficient to lift the entire load at once instead of lifting it a piece at a time, as the previous practice has been. In dealing with the railway situation, if the hours of labor are definitely placed upon an eight-hour basis or less, it would be one or two generations before there could possibly be any serious demand for change, and we might well leave the solution of that part of the problem to those who would have to deal with it at that time.

"In any system of continuous arbitration the final protection of the wage-workers against unfair decisions would be the

standard of living which is flexible and may be raised or lowered and the workmen still live, while the employer would have as his final protection the clean-cut, inflexible line between profit and loss, which he would be able to show definitely from his cost accounts. This would result in giving a greater measure of protection to the employers than to the employes against the possibility of unfair decisions.

"The first objection cited involves a serious question of human liberty which no majority should have the right to invade. I realize, however, that when all the people are cut off from their food supply and starvation confronts them, they are not going to stop to consider whose rights are invaded or whose liberty is destroyed. They are going to find means of securing food. They will take the most direct road, whether that happens to be the right way or the wrong way. For that reason it would seem the part of wisdom to carefully work out the problem when no crisis exists with a view to conserving both the freedom of the workers and the food supply of the people. The other two objects are purely economic and may with perfect propriety be dealt with in such a manner as will best protect the general welfare.

"These thoughts have been borne in mind in the preparation of the measure which I submit for your consideration. It is proposed to create a system by which nothing can be gained by striking. Other machinery is provided by which progress can be made. The worker is left free to work or not, individually or collectively, and the employers to dismiss their workmen individually or collectively, but the motive for strikes and lockouts is destroyed. I feel sure that with a measure of this character on the statute books strikes and lockouts would never occur over a sufficiently large area to seriously impair the transportation facilities of the country, and the end would be reached, not by crushing the workers, but by giving them a different method of adjusting grievances." * * *

THE RIGHT TO STRIKE

By Austin B. Garretson,
President of the Order of Railway Conductors
The Independent, Jan. 22, 1917

The President desires the enactment of a law, not for the compulsory investigation of strikes, as many suppose, but for the investigation of the conditions that have brought the possibility

or the probability of a strike, before it can take place. He desires the enactment of a law containing provisions similar to those in the Canadian Industrial Disputes Act, which make it illegal for a strike or lockout to be ordered by either employee or employer before the causes leading to it have been investigated by the Government. At its last annual meeting the Canadian Trade and Labor Congress—the A. F. of L. of Canada —passed a resolution, almost unanimously condemning it for the reason that it pinches only one foot, binds only one side of the industrial struggle.

As such legislation actually works out, as is evidenced under the Canadian act, the employer invariably utilizes the period of delay that is specified for investigation to make preparations for a strike, hiring strike breakers, even importing them, in defiance of alien laws, so that when the period of involuntary service required under the act has elapsed he is in position. if the finding of the tribunal that has done the investigating upholds the contentions of the men to any degree, to repudiate the award, and to replace the forces of the men. In other words the act wholly and absolutely disposes of the tactical advantage that may lie with the employee, who is, of course, in the very nature of a strike, the attacking party. Almost any strike illustrates the fact that there is a psychological moment for striking—one that is just as important in industrial warfare as in international warfare; just as important to a strike, often, as Japan's attack upon the Russian fleet was to the Russo-Japanese war. An act of this kind renders valueless the greater part of the weapons of the laboring man. It is on that account, primarily, that there is such widespread opposition to the enactment of laws of this character. In a word, it gives the employing side a great advantage.

Strategically, this advantage works to the good of the other side in railroad strikes especially. In the first place this is true because the railroads are adept at providing on short notice a mass of statistical evidence that often overwhelms investigators who are dealing with matters as complex as the compensation given railroad employees, and the conditions under which they serve. This evidence, moreover, is often so skillfully presented that it is deceptive. In the second place, the railroad brotherhoods have always gone forward on the theory and practise of compromise. In dealing with their employers they have been content with almost any appreciable proportion of that which was demanded. The willingness of the brotherhoods to compromise in this manner (growing out of the quasi-public character

of the service) has often brought upon them the criticism of other crafts, some of whom condemn such willingness to exert every means toward settlement before appealing to the strike. This situation is reflected also in the fact that the experience of the railroad brotherhoods in strikes is very limited. The two great strikes in America, in 1893 and 1877, were not conducted under the auspices of the brotherhoods. There has been nothing approaching a general tie-up since.

The influence of every combination of men in this country who are employers of labor and of men who are in the conduct of enterprises commercial in their character, from which profit is derived, is lent to the enactment of a measure which will permit the continuance of profits without actually interesting themselves as to the facts of whether or not the welfare of the worker is safeguarded thereby. To such men the acme of success is the continuance of profits or the increasing of them. And as what may be described as "the master class" is in control of most of the journals through which public opinion is exprest and by which public opinion is formed, it becomes readily apparent that the real will, the real desire and the real purpose of the great majority of the citizens of the republic rarely come to the surface at all and then only in fragmentary form. When industrial strife creates suffering and hardship, complaints as to these hardships seldom originate with those who suffer real hardship, but almost wholly from those who suffer nothing but diminution of profit. When there is a cessation of street car service in a great city the demand for resumption of peace, regardless of the terms of settlement upon which resumption may be founded, comes not from the working people who are compelled to walk or avail themselves of makeshift transportation, although they make up nine-tenths of those who supply the revenue of the street car companies, but almost wholly from those whose profit suffers by the inability of the purchasing class to continue to contribute to the endless chain of merchandizing or manufacturing. It is significant, in other words, that in these cases and in most other cases where the public interest is at stake a cry is always made in the name of the suffering public, when in fact the actual suffering public voices no protest and accepts the hardship as part of the heritage of men who labor.

This cry on behalf of the suffering public has been raised by the employing class in behalf of the enactment of the President's proposed bill.

What labor men resent in this proposed bill is the utilization

of forces of any character whatsoever as weapons by one side or the other in a strike because labor has learned that the interest of the government is in peace and in profits. The police forces and the military, both state and national, instead of being utilized only for the purpose of seeing that each of the combatants in industrial strife uses only legitimate means, are almost invariably used as weapons for the purpose of furthering the interest of the employing class at the expense of the employee. Out of this long established practise grows the feeling on the part of the laboring man against the expansion of military power either upon the part of the state or nation. Experience has taught the laboring man that military power is more often directed against him, to break down his resistance to oppressive conditions than against any outside foe. He therefore regards any legislation that makes possible any greater measure of oppression as directly inequitable, as, in fact, the worst form of preparedness. The correctness or incorrectness of this view on the part of labor is easily tested by one rule—by an examination of the arrests and convictions made in strikes for a class of offenses that if no strike was in existence would not be considered as offenses. This examination will show you how the peace power of state and city are pressed into industrial conflict against the weaker side. The same use of the supposed peace power is indicated by the existence of a large number of agencies which veil their real purpose under the name of detective associations, yet draw the larger part of their revenue from and find their principal field of activity in the furnishing of either professional strike breakers or armed guards, all of whom usually carry arms in utter defiance of the statutes of the various states in which their activities are exercised and against whom no legal action is taken.

Taking these facts in conjunction with those previously referred to, one need not seek further to find causes for the hostility of laboring men generally, both union and non-union, to the enactment of further legislation formulated for the purpose, as they believe, of further limiting the abilities of the working man to better his own condition.

The greatest difficulty that confronts final disposition of the strike between the man who has and the man who has not lies in our methods in dealing with it, and in our refusal to look issues squarely in the face. Indisputable evidence of the existence of that fundamental error is found in the fact that now, at a period of unprecedented prosperity in this very metropolis, one-twelfth of the funerals end at the potter's field.

That almost unbelievable thing is fact.

It is needless to go further than this grewsome fact to establish the reason for the existence in the minds of men from the paths of labor as to the inadequacy of the present method of the distribution of the results of labor, and it is not difficult to understand that the mass of men who realize that they have not received what they believe to be a fair recognition for their work will hold that democracy as exemplified in our government has been a failure. To men seeing things from this point of view it is inevitable that the theory of direct action would have great appeal in the face of the enactment of laws such as the President recommends, or of any law that adds to the machinery by which they believe that their rights are disavowed, their efforts nullified and their reward for toil made non-existent.

Much has been said and written about the surrender of government to an oligarchy of labor.

Capital has been made of the fact that Congress passed the Adamson law in the interest of a little group of 400,000 men, yet in the years gone by, legislation of the character of special privilege has been passed by the supreme legislative body at the behest and in the interests of groups of men composed of not one-one-hundredth part as many as are represented here. Millions of acres of land, the world's supply of standing timber, water rights, charters for utilities, deposits of coal, a supply of oil to serve the world, have been exploited by these very self-elected spokesmen of a long suffering public, now raising their voices in denunciation of an act humanitarian in its character, secured, it is true, through the efforts of 400,000 men, but inuring to the benefit of untold millions who now labor hours still out of all proportion to the stipend paid.

This proposed law is a step backward. The Adamson law was a step forward even though it has brought forth, as all laws do that are passed in the interest of others than the chosen few, a plentiful crop of criticism as to its unfairness, its injustice and its impracticability. It seems inevitable that in the future there must be more legislation of similar character, and less of the kind that guarantees to Shylock his pound of flesh. For the tendency of the age is toward recognition of the rights, not the privileges, of the common man, regardless of the powers of either invisible government or entrenched privilege, and the coming years surely will see the enactment of laws which will make impossible the condition that in a period of unrivaled prosperity contributes its benefits to the privileged few, while the great body of citizens are in a more depressing condition be-

cause of high prices than they were in preceding periods of depression. The Adamson law is such a law. Any law that deprives either side of the opportunity to exercize to the fullest every legitimate energy it possesses is not.

THE WORK OF EMPLOYERS' ASSOCIATIONS IN THE SETTLEMENT OF LABOR DISPUTES

By James W. Van Cleave,

Chairman of the National Council for Industrial Defense, and Former President of the National Association of Manufacturers.

Annals, Vol. 36

When the board of editors of The Annals of the American Academy of Political and Social Science asked me to write a paper for them on "The Work of Employers' Associations in the Settlement of Labor Disputes," I felt honored. I have been familiar with the Academy's publications for years. Their contributors are men who speak with authority on the subjects which they touch. Everything which carries the Academy's imprint is studied all over the country by investigators and thinkers in the broad field which it covers.

As an employer for many years, as president of the National Association of Manufacturers for three terms, and as chairman of the National Council for Industrial Defense ever since its formation in 1907, consisting of 228 national, state and local organizations of business men, nearly all the members of which are employers, I naturally have had a good deal of interest in the question which I have been asked to treat. As all of us see, from the great number of labor disturbances of one sort and another in 1910, this question is becoming more and more an issue of grave national concern.

In discussing the question which is the subject of this paper it will be necessary to examine it on all sides, and particularly to avoid making the mistake of supposing that all the blame for labor disputes belongs to the workers. Let me quote here a few expressions from an address which I delivered at the annual convention of the Citizens' Industrial Association of America, held in Chicago, in December, 1906:

"As an advocate of fair play for everybody I will say a few words today to my fellow employers on our duty to give a square deal to our employees. We see socialists, anarchists and extremists of all sorts springing up in large numbers all around us.

Let us question ourselves and learn whether or not we have had any part in generating these destructionists.

"As we all know, there are autocratic and oppressive employers. Judging by many of their acts they seem to believe that the relations between capital and labor are like those between belligerents in war. With them every sort of aggression which they can perpetrate without coming into collision with the statutes is fair. These employers seem to think that they are justified in taking every advantage which offers itself over their employees, and also over the public.

"Of course this class of employers is far in minority. It is numerous enough, however, to reflect discredit and to inflict injury on the entire guild of employers. It is the one oppressive employer out of the one hundred who generates the wrath of the demagogs and their dupes. * * * This one sinner, therefore, becomes more of an enemy to the rest of the members of his order than he does to the element which he arouses into irruption.

"In several ways the labor unions have done good service to the workers. They have promoted a fraternal feeling and cultivated a spirit of mutual helpfulness between men in many sorts of occupations. They have aided in advancing the wages of workers, and thus have obtained for labor a large share of the profits which the co-operation of labor and capital have brought. As fair-minded men we must concede all this. I, for one, have no desire to take away any of the credit belonging to the labor unions for any of the good which any of them have done."

Holding these views, and believing that workers have as good a right as employers to organize, I welcome combination among workers because of the opportunity for collective bargaining which it would offer. Manifestly it is easier for an employer to make a contract with a thousand workers in a body than it would be to do this with each of them separately. I think a large majority of employers hold this view.

But here a drawback enters: We must devise a way by which the unions shall be compelled to respect their contracts. They should be legally responsible so that the law can reach them when they break faith with their employers, just as the employers are punishable by law when they violate their agreement.

My experience of the arbitrariness of some of the labor unions under their autocratic and anti-American leaders, and their disregard of pledges, give me an especial reason for urging the adoption of some means whereby the unions, as unions, may be

made responsible for their acts. The experience of most of the other employers of labor on a large scale is like mine on this point. For their own and the workers' interest employers should advocate the placing of full legal accountability upon labor unions, so that the duties and responsibilities, as between employers and workers, shall be reciprocal and equal. When this elemental demand of justice and fair play is met, employers will be able to exert much more influence in the adjustment of labor disputes than they have heretofore. As a class, employers are always glad to meet workers half way in settling disagreements regarding wages, hours of work and other conditions when the workers present their side in an amicable spirit, and when they give any assurance that their pledges will be kept in good faith. Industrial peace is to the interest of employer and employee alike.

In support of my assertion that as a class, we desire to settle disputes with employees in a peaceable way, I will cite one of the planks of the "Declaration of Labor Principles," adopted by the National Association of Manufacturers in 1903:

"The National Association of Manufacturers disapproves absolutely of strikes and lockouts, and favors an equitable adjustment of all differences between employers and employees by any amicable method that will preserve the rights of both parties."

This is the creed of an organization of employers who represent more workers and more wealth than any other combination of men on the globe. Let the reader of these lines observe that the National Association of Manufacturers opposes lockouts by employers just as strongly as it does strikes by employees. To it the lockout is as objectionable as the strike. With this principle I have always been in hearty accord. I have been against strikes, lockouts and blacklists from the beginning of my days as an employer.

Manifestly the influence of the National Association of Manufacturers in the equitable adjustment of labor controversies has been far reaching. It has extended to thousands of employers outside of our organization. The same attitude is taken by most of the employers represented in the 228 organizations affiliated with us in the National Council for Industrial Defense. We have exerted our influence in a decidedly practical way. When the officers of the American Federation of Labor have, on several occasions, attempted to coax or coerce Congress into the enactment of laws which, in industrial disputes, would virtually have abolished the injunction and have legalized the boycott,

representatives of our organizations have appeared before congressional committees and in conference with congressional leaders, and have given practical voice to the American hostility to class legislation of any sort. Thus the special favors which the labor union magnates asked from Congress were refused. Before state legislatures all over the country we have done similar work. Our influence was exerted in the same way in the Republican National Convention of 1908, where we defeated a plot by which the same elements attempted to commit that party and its presidential condidate to the policy of licensing a favored order of law breakers in the community.

Thus we have aided in improving the relations between employers and workers, have assisted in protecting the non-union workers as well as the employer in the enjoyment of his rights, and, by example, have furnished to the intelligent and public-spirited members of the labor societies an incentive to curb the arrogance and rapacity of their leaders.

At the beginning of this article I quoted some expressions from an address which I made in Chicago in favor of peace between employers and workers. This necessity is greater in 1910 than it was in 1906. Business is more diversified and expanded now than it was then. Our manufacturers, to a steadily increasing degree, outrun home consumption. Coincidentally with the growing need of winning new foreign markets for our surplus products there comes a closer competition between us and the great industrial countries of Europe. For these and other reasons the establishment of industrial peace becomes more and more imperative every year. At the same time anything like extended peace becomes more difficult to win and to hold. Notwithstanding the hard blows which have been dealt to them by the courts in recent years, some of the labor leaders are getting to be more arrogant and aggressive than ever.

Philadelphia had an illustration of this truth recently in the street car strike and in the sympathy strike which followed it. Of course the latter failed. Always and everywhere sympathy strikes fail. Sympathy strikes are the quickest and most effective means of alienating sympathy from the strikers which the mind of man has yet devised. In Philadelphia, too, at a meeting of the American Academy of Political and Social Science, shortly after the strike, the head of the American Federation of Labor renewed his denunciation of the judges and the courts because the boycott has been outlawed, because injunctions are still issued for the purpose, if possible, of averting irreparable injury, and because the courts refuse to draw any line of dis-

tinction between law breakers among employers and workers, labor unionists and capitalists.

These outbreaks of demogogy place obstacles in our way in our endeavor to diminish the number and the destructiveness of labor disturbances. They tend to make labor union workers discontented and inefficient, and, in some degree at least, they increase the cost of living. Moreover, they give aid and comfort to the socialistic enemies of the existing order.

The maintenance of our whole industrial structure depends upon the efficiency and the reliability of labor, and the promotion of peaceable relations between employers and employed. As shown by a bulletin recently issued by the United States Labor Bureau at Washington, within the past two years thirty-two states have enacted fifty-four laws, or amendments to laws, in this broad field. This shows the importance of the subject. Some of these statutes however, are calculated to harm instead of help our industrial interests, and thus ultimately to injure the element which they were designed to aid. This is particularly true of employers' liability laws, a few of which were enacted, and other measures in the same line which, though defeated or averted, in the sessions of some of the legislatures in 1910, are certain to be brought forward in the next sessions. Some of these statutes make employers' risks so great that they may be compelled either to reduce wages or to close their mills.

A labor measure was before the Massachusetts Legislature at its recent session, however, which had real merit. It provided that no strike or lockout in any activity in which twenty-five or more persons were employed could take place until the controversy was submitted to a competent tribunal and a finding had been made. Thirty days notice was to be given by employers or workers of contemplated changes in wages or hours, the case, in the interval, to be appealed to a regularly constituted tribunal, if requested by either party. In a general way this measure was based on a statute which has been in operation in Canada for three years, except that the Canadian law applies only to mines and public utilities. A powerful element of the people of the Dominion, especially the labor organizations, like the law so well (it has resulted in the peaceable settlement of ninety-seven per cent of the labor controversies) that an endeavor will be made to extend the statute so as to cover all industries.

On the other hand, the Massachusetts labor leaders, supported by the principal officers of the American Federation of Labor, opposed the measure when it was before the Legislature of that

state. They did this on the ground that the privilege of striking suddenly, and without notice to employers or public, is a powerful weapon of coercion in the hands of the unions, and should not be surrendered. This is one of the many points on which the demands of the labor union chiefs conflict with the convenience and the rights of the community.

But in appeals of labor controversies to regularly or specially constituted tribunals the public should insist that these bodies be impartial as well as intelligent. They must be free from prejudice of any sort, must refuse to be swayed by the clamor of the demagog or professional agitator, and must render their judgments with courage and absolute fairness to all interests which are involved. In these days of mobs and hired cliques this requirement of fearlessness and evenhanded justice on the part of boards to which labor controversies are submitted is imperative.

COMPULSORY ARBITRATION IN RAILROAD DISPUTES

Albert Chandler

Review of Reviews, January 1917

Had a frugal citizen proposed on November 1 to save the expense of the presidential election of November 7 by submitting to arbitration the comparative merits of Mr. Wilson and Mr. Hughes, the Democrats to choose one arbitrator the Republicans one, and the board to be completed by adding three neutral wise men from the Hague, his sanity would have been inquired into. Why? Because the nation wanted to settle the question by a trial of strength—and it was worth the price.

In politics we have learned how to test the full man-power of the nation, without bloodshed or violence. Some of our southern neighbors have not; their election machinery does not satisfy the intelligence, and the loser starts a revolution. In international affairs, we have not learned how to test the strength of one nation against another except by war; and we shall have wars between nations until we can satisfy the intelligence of the weaker in some other way.

Had the question been to choose Mr. Wilson or Mr. Hughes president of a college, we should have been content to refer it to a committee. So nations refer "arbitrable questions". In conflicts between industrial groups, shall we have to devise a means of trying the full strength of the conflicting interests peacefully, a trial which will satisfy the intelligence of both

parties and the public too as to who is the weaker, before we can eliminate war? Will the suggestion of President Wilson in August, repeated in December, suffice? Today a strike is the only ultimate test of strength to satisfy the intelligence of employer or employee that he must yield. No party wants a revolution; it is a crude means towards an end; so nobody wants a strike. For even to the father of anarchy, Bakounin, it was axiomatic that "the desire for destruction is at the same time a creative desire".

Yet, while we have this political efficiency in larger affairs, it hardly shocked us to see four years ago a report to Congress that there were eighteen different systems of bookkeeping in the Treasury Department; that the Post Office Department regularly hauled mail from the Printing Bureau to the Post Office some three quarters of a mile away, only to haul it back again to the railroad station, across the street from the Printing Bureau; and that there was inefficiency throughout which would ruin any private business.

Private business has had the intelligence of the ages devoted to making a single plant successful—with little thought for the general industrial aspects and problems. On the other hand, the best brains in history have been applied to the broad problems of statesmanship, leaving details of nice efficiency to cheap clerks. The contrast is obvious and the result natural.

INDUSTRIAL WARFARE

In our larger problems of industry we are where we stood politically five hundred years ago. The propaganda of the deed appeals to those who feel driven to meet what they call tyranny, when, after the Homestead riots, an anarachist shot Mr. Frick, he had apologists—honest men who had learned from Bakounin that they must have the devil in them, for the devil was the "unconquerable foe of absolutism". So after the Duke of Burgundy had his cousin assassinated, Jean Petit justified political assassinations in eight propositions and nine conclusions after the scholastic manner, demonstrating that assassination of a tyrant was not objectionable. We are at that point in industry today; destroy the tyrant. The doctrine is widespread; have we not all glorified William Tell?

The attitude of a man as a citizen toward the law is the same as his attitude as a churchman toward God: he will worship but he won't obey.

So we have employers hiring gunmen, and workers blowing up bridges; in Colorado—the only state which has a compulsory

arbitration law—a group of mine owners compelling a sheriff to resign, and, after the appointment of an operator to fill the vacancy, closing a rival mine which had no trouble with its 475 employees; and a Haymarket anarchist saying on the gallows: "I despise your order, your laws, your force-propped authority. Hang me for it".

"Violence," however, said Liebknecht, "has been for thousands of years, a reactionary factor",—a short-sighted policy. Against the Socialists of Liebknecht, Bismark had at his disposal "all the means of mechanical force. We had only our just rights, our firm convictions, our bared breasts, to oppose him with, and it is we who have conquered. * * * In the course of time brute force must yield to the moral factors, to the moral force of things". After twelve years of repression, they cast a million more votes than at the start, and the law was repealed. So when compulsory arbitration was agitated in Berlin, twenty years ago, the German government did not take it up.

GAINS TO STRIKERS

Yet striking has paid. In Bulletin 147 of the Department of Labor, we find reports of the careers of New York garment-workers. For example:

Cutter No. 8. Born in Italy in 1874; came to United States in 1877; went to work in 1886 pulling bastings at $1.25 to $2.00 a week; beginning in 1889 was for several years an operator on men's clothing at $3 to $9, and then jacket tailor at $10; then for three years a contractor in men's clothing line; in 1900 at twenty-six years of age, he entered this occupation, learning the trade by taking private lessons from a cutter in the latter's home; made $20 as cutter on men's clothing and $22 on cloaks and suits up to 1910; since the strike he has been making $25 as cloth cutter on cloaks and suits.

Railroad engineers increased their wages 50.3 per cent. from 1896 to 1914. Striking has paid because of its remote pressure, so to speak—employers B and C raising when employer A has trouble. This is the reason for the general strike fund, and contributions.

WHERE THERE IS "NOTHING TO ARBITRATE"

Today wages have not their former importance; their adjustment, therefore, can often be left to arbitration, under our first postulate that this makeshift contents men where no vital principle is involved. What besides do the workers want? They want more. More what? They talk a great deal of "social

justice", but it matters not what may be the immediate object along the direction of their aspirations; they want more, as we do, and as our children will, when they grow up, if they are the right sort. Employer, worker, a healthy public—all want more. Ambition is a frame of mind. Lasalle aroused the German workmen from contentment by denouncing their absence of needs. "Absence of needs is the virtue of the Indian pillar saint and the Christian monk; but in the eyes of the student of history and the political economist, it is quite a different matter. Ask all political economists what is the greatest misfortune of a nation. The absence of wants. For these are the spurs of its development and of civilization".

Can you compel a man to arbitrate anything which he feels—right or wrong—to be necessary to his own development? That is what has made martyrs; and in all history, ultimate victory has settled again and again on the causes for which men suffered martyrdom, even mistakenly. "There is nothing either good or bad, but thinking makes it so", and if the matter in issue is never so slight, yet believing it vital will make it so, and it will not be arbitrated.

ARBITRATION DISTINGUISHED FROM JUSTICE

When Louis D. Brandeis told the garment trade in 1910 that the employers and employees should think less of their rights and more of their duties to each other, he outlined a path toward the creation of trade consciousness necessary to solve industrial problems,—a living consciousness of a common interest.

But we need a third element which seems to be lost sight of in Washington today. If the public proposes to compel arbitration between employer and employee, it should think of its duty as well as its immediate rights. Our arbitrators, both at the Hague and in industry, even the five distinguished men appointed in 1912 by Chief Justice White to settle the Eastern Railroad strike, confess with one voice that arbitration has not sought to decide judicially, but to split differences. We are the Great Court; we agree that arbitration is not justice -is there, then, to be no appeal, because it may be inconvenient to the court? Our duty is to see that justice is done—that is our duty to the worker and the employer. Our duty is to see that justice is tempered with mercy—that is our duty to ourselves. Our duty is to see that repression shall not be employed and thus provoke reaction; that rights be not invaded until explosion results—that is our duty to posterity.

The wisdom of all mankind teaches the same lesson: that

repressing is alluring but short-sighted. We may parallel Karl Marx with the statement of a distinguished corporation lawyer, Mr. Levy Meyer, in an address before the Creve Coeur Club on February 22, 1915:

"Educate the people, beginning with the children in the common schools, to know that legislation cannot create or change the constitution of man; that there are certain things that the law cannot accomplish, no matter how drastic and minute its provisions; that it cannot successfully run factories and shops by law, commissions, or investigations. Economic life will not yield to legislative medicine."

OBJECTIONS TO THE CANADIAN LAW

True, some color of support is given to the suggestion of compulsion by a paragraph on Page 345 of John Mitchell's book, "Organized Labor": "In the case of railroads engaged in the interstate traffic it might become necessary for the Federal Government to compel such railroads to arbitrate differences with their workmen." But there is no suggestion here that the laborer shall be compelled to work even temporarily against his will. The official organ of the American Federation of Labor, in its December number, anticipated the President's message asking Congress to adopt the Canadian Compulsory Investigation Act—which has not made peace—and proclaimed it to be a step toward involuntary servitude. Will they submit to it? Is asked rhetorically, and answered Never! If that is the way they feel about it, they will not submit long, and ought not.

AROUSING THE PUBLIC CONSCIENCE

We, the people, owe a duty to apply the force of public opinion intelligently to any issue, on better than newspaper stories, and thus have a right to compel an investigation and a publication of the findings of our own investigators without restraint upon either side. That is one force which can be exerted without war, usually a compelling force. We may hope to fuse the consciousness of the worker, of the employer, of the people, into a composite—it is the only sensible hope today.

Here in America, where we have no class distinction into which a man is born and has his being, where wealth or poverty is not a status, but a place of peril and hope, we can have a vision of a public conscience absorbing the class-consciousness of the worker and the employer too. It is not for stratified European society, but for us, to take up the white man's burden. We could cut off the head of a tyrant but we cannot cut off or change an

economic law which produces him; we can only outline it, and perhaps accelerate the processes of progress along the path of time. Let us make no backward step to a use of force ourselves, while we are asking capital and labor to abandon force. We shall settle this problem sooner by being hopeful and forward-looking. Though the next forward step be to apply public opinion intelligently, without a force bill, we shall pass through that stage, and what remedy is beyond? Something better. It will not appear like the big sun rising over the horizon, but in time will dispel the darkness as our common intelligence creates an idea which dawns on all alike, on worker, employer, and public. There must be some better way than strikes or arbitration as our civilization advances.

EVOLUTION OF LEGAL REMEDIES AS A SUBSTITUTE FOR VIOLENCE AND STRIKES

An historical argument leading up to the settlement of industrial disputes by judicial remedies, arbitrable tribunals and industrial commissions.

By Henry Winthrop Ballantine,
Dean, College of Law, University of Illinois.

The Annals. Jan. 1917.

INDUSTRIAL AND INTERNATIONAL JUSTICE STILL IN A PRIMITIVE STAGE

A barbarian may be supposed to be blissfully unconscious of his own barbarity. We regard ourselves as the product of a highly civilized age, yet we take complacently, and almost as a matter of course, many relics of barbarism, notably, public war and war preparations as a method of compelling respect for international rights, and private war and strikes as a method of asserting economic rights. Only a few centuries ago, our barbarous ancestors in England and on the continent of Europe employed private war as a normal method of settling all serious individual wrongs. The slow process of substituting law in place of force and violence, which may be traced in the ancient history of Greece and Rome, and which occured doubtless in still older civilizations, repeated itself almost independently in England, showing that some of the most ancient history may be found in comparatively modern times.

It may prove instructive to trace the gradual evolution of judicial and extra-judicial remedies in a broad and rapid manner, as showing that the only hope of permanent peace is a complete administration of justice by judicial remedies. There is a

most interesting analogy here in the legal relations between the various nations and the legal relations between labor and capital. International peace can only be established by a world reorganization for international justice in courts; and industrial peace can only be firmly established by industrial tribunals for the impartial and speedly settlement of labor disputes and the furnishing of adequate remedies for industrial wrongs, individual and collective. This argument would aim to prove that our economic system will have to provide for economic justice, or pay in violence and bloodshed for injustice.

THE BLOOD-FEUD

In the tenth and eleventh centuries, Englishmen lived mostly without law. In those lawless days, the state could furnish little protection to the individual, and on account of his personal insecurity, a man dared not separate from his kin and stand alone. The blood-feud, or vendetta, gave protection by ensuring speedy vengeance for injury. It is the state of enmity that results between the kindred or maegth of a man who suffers injury and that of the injurer. The family or kin ("maegth") is often called the "blood-feud group." In Tacitus, we find that every man was bound to take up the enmities as well as the friendships of his father or kinsman. But already in Tacitus, as in the Anglo-Saxon laws, we find that injuries may be appeased by compositions of cattle or money.

The system of compositions and wergelds is thus an outgrowth of the blood-feud. The kindred of the slain must demand payment of the wer or prosecute the feud. The healsfang or first installment of the wergeld was the symbol and price of the restoration of peace. In Alfred's day, it became unlawful to begin a feud till an attempt had been made to exact the established price as amends.

At the end of the Anglo-Saxon period, homicide and other offences had to be settled by compositions, if possible, except that killing was lawful and justifiable in the case of a thief caught in the act, and carrying away the stolen goods, or of an adulterer or outlaw.

LIMITATIONS ON FEUD

When a murder had been committed, the kindred of the accused might first swear him free, if he were innocent. If they were unable to do this and unwilling to pay the wergeld, they had to bear the feud. The Anglo-Saxon feud went on until a number of "murderers or their nearest kindred, head for head" were

killed equal in value to the "man-worth" of the murdered man. Six ceorls must die for one thegn. The feud was thus strictly limited in time and number, and did not (as is said to be the case in Kentucky) go on for years till whole families became extinct.

GiOWTH OF PUBLIC ADMINISTRATION OF JUSTICE

Slowly but steadily, the developing state wrests these rights of police and blood-feud from the hands of the maegth. The state gradually assumes the public functions of protection and punishment. Though self-help, private redress, is tolerated by the Anglo-Saxon kings, it is limited as far as possible. The king is everywhere engaged in enforcing composition. The blood-feud is moderated by the system of "bots" to the injured and "wite" to the king for infractions of his "peace." Private vengeance is restrained until public tribunals have passed judgment, and then if composition is refused, the kinsmen are the executioners. Finally the system of private vengeance and reprisals, which the Saxon kings were forced to tolerate, succumbs to the firm hand of the Norman rulers. The king's peace covers all; the public administration of justice supplants self-help and recourse to courts supersedes the recourse to physical force, which is the instinctive method of redressing wrongs.

SURVIVALS OF SELF-HELP

In many cases, we recognize that it is legitimate to exert leverage and extort justice by withholding that which chance, strength, foresight or strategy has put in our possession. If a man owes you money, and funds of his come into your hands, you will probably retain what he owes you rather than trust him to voluntarily pay you what is due. Liens, or the right of detaining property of the debtor already in the hands of the creditor for services rendered thereon, are favored by the law. If you do not have funds of his already can you seize his money or cattle for yourself and keep them until he is compelled to do justice? Distress, or this power of seizing a man's property extra-judicially in satisfaction of a demand, occupied a prominent place in early remedial law and is very ancient among all peoples. But for a man to be judge and executive officer in his own behalf is not to be endured. Distress is soon overloaded with formalities and confined to a few claims of great urgency. Until recently, however, a landlord, without suit or adjudication, could enter his tenant's premises, seize his belongings, and hold and sell them for the rent, but this harsh and oppressive remedy has practically become extirpated or transformed into

the judicial process of attachment or execution. The extra-judicial has developed into the judicial distress. A court must authorize the taking and send an officer to do it.

Self-defense, the defense of possession, the recaption of chattels, reentry on land in the adverse possession of another, the abatement of nuisances, are the principal examples of extra-judicial remedies still permitted by the law under certain conditions, if employed without breach of the peace or unnecessary violence. A man may not kill or wound, however, merely in defense of his property.

STRIKES, LOCKOUTS AND BOYCOTTS

Labor and capital are still largely left to settle their controversies by primitive methods of self-help, such as strikes, boycotts and lockouts, under certain limitations imposed by law as in other extra-judicial remedies. Just what these limitations shall be, is a matter of bitter dispute and litigation. These remedies are difficult to control and go largely on the basis of brute force instead of reason. They are still the ultimate appeal, in spite of their disastrous consequences to the public and to all concerned. Working men have been largely left to extort such economic justice as they could by withholding their labor, using this negative weapon against the weapon of starvation and lockout in the hands of the employer.

SMALL LEGAL RECOGNITION OF ECONOMIC RIGHTS

Labor has been aided to some extend in recent years by legislation as to employer's liability and as to hours and conditions of labor, but the enforcement of such laws has been very inadequate. It is only in legislation, in the public regulations of the statute book, not in the common law, that the economic and social responsibility of capitalists and employers finds expression. The courts, in formulating common law, have not recognized the sphere of economic rights. They have not undertaken the duty of asserting social and collective interests or building up a just social or economic system. The rights of property, as worked out by common law, are thus individualistic, not social or communal. The complex mechanism of capital and labor is the result of the play of unregulated individualism and self-help in the acquisition of private property. In New Zealand, Australia, Canada and in some of the European countries, some progress is being made in arbitration and industrial courts have been established which attempt to reconcile the conflicting interests of capital and labor on a basis of economic justice.

SELF-PRESERVATION

Where a working man is oppressed, when his legal and economic rights are denied and trampled under foot, he is placed face to face with the practical question "What to do?" Through cowardice, ignorance, or weakness, shall he endure the wrong? Shall he let his rights go trampled under foot by the employer unpunished? Or shall he struggle and obtain better living conditions for himself, and his family, as best he may? The preservation of existence is the deepest instinct of every creature, and to tolerate injustice, as Von Ihering points out in his Struggle for Law, is ultimately to forfeit existence. In the beginning, bloodshed and violence were necessary to redress wrongs, and the only security for person, property, or family, was to let other men know that they could not invade any of these rights without attack. Violence seems still the ultimate remedy of working men so long as we have gross inequalities before the law.

PRIMARY DUTY OF GOVERNMENT

The state cannot expect individuals to refrain from the natural and instinctive exercise of private force for self-preservation and the redress of injuries, unless it supplies means to maintain their just rights and also of bringing wrongdoers to punishment. Unless the administration of justice insures a reasonable degree of popular satisfaction and acquiescence, the private justice of mob lynchings, family feuds, the custom of carrying knives and revolvers, violent strikes, syndicalism and sabotage and other manifestations of violence will ensue, which threaten the entire social system. Mankind universally approve of violence which is used to avenge and beat off injustice, if there be no other remedy. Without public justice, superior in power to all offenders, there can be no peace, safety, sense of security, or mutual intercourse. To establish justice, to secure individuals and society in the enjoyment of their rights, is, next to external defense, the great duty of governments and the principal reason why they are instituted among men.

GROWTH OF ADMINISTRATION OF JUSTICE

The progress of society to a complete administration of justice has been slow and gradual, and it must probably continue to be so in the economic field. The principal stages in the establishment of judicial tribunals as a substitute for violence, self-help and private vengeance, seem to be, first, the furnishing of opportunity for voluntary acceptance and choice of peaceable

arbitration, as in international relations, and later, the making of submission of disputes to arbitration more and more compulsory. Naturally, the earliest wrongs to call for remedy, were the so-called trespasses, such as assault and battery, false imprisonment, and the seizing and carrying away of goods from another's possession. Later, remedies are extended for less tangible wrongs, such as defamation, slander and libel, and the non-performance of contracts. It comes to be recognized that it is the king's duty and function to provide some sort of remedy in his courts for every substantial wrong or grievance.

UBI JUS, IBI REMEDIUM

The most vital principle in the growth of law is that represented by the maxim Ubi jus, ibi remedium. That is, that a remedy must be given for the violation of every right, or, in other words that every injury must have redress. As Chief Justice Holt said in the famous case of Ashby against White where an election officer was sued for his refusal to permit a voter to vote, "It were a vain thing to imagine that there should be a right without a remedy, for want of right and want of remedy are convertibles." As was said by Chief Justice Marshall in the great case of Marbury against Madison, 1 Cranch, 163, "The very essence of civil liberty consists in the right of every individual to claim the protection of the laws, whenever he receives an injury. One of the first duties of government is to afford that protection."

A NEW PROVINCE FOR LAW

These labor controversies involve the interest of all the people in addition to the interest of the opposed forces of employes and employers. Has not the time now come for the recognition of a new province for law and a new set of remedies, and the substitution of the peaceful methods of arbitrations and commissions in place of the violent redress of economic injuries? It is no doubt true that strikes cannot be entirely done away, and that a large measure of self-help must still be recognized in connection with industrial bargaining. But legal remedies must also be provided, at first largely of an optional nature.

Under such a system, it may be justly demanded by public opinion that employers and employees alike shall submit their wrongs and complaints to public tribunals and abide by their decrees. The intervention of an impartial tribunal will require the rational investigation and patient inquiry into the facts of the case. It will afford opportunity for thorough argumentation

and calm weighing of the principles of right and justice to be applied. It represents the civilized appeal to reason, instead of the barbarous recourse to arms.

The public now stands aside and lets the parties to an industrial dispute fight it out according to the rules of the game. The state has neglected its duty to provide other means than strikes and self-help for settling these disputes. As Blackstone says in his Commentaries:

A third subordinate right of every Englishman is that of applying to the courts of justice for redress of injuries. Since the law is in England the supreme arbiter of every man's life, liberty and property, courts of justice must at all times be open to the subject, and the law be duly administered therein. The emphatical words of magna charta, spoken in the person of the king, who in judgment of law (says Sir Edward Coke), is ever present and repeating them in all his courts, are these: nulli vendemus, nulli negabimus, aut differemus rectum vel justitiam (to none will we sell, to none deny, to none delay either right or justice): "and therefore every subject," continues the same learned author, "for injury done to him in bonis, in terris, vel persona (either in his goods, lands, or person), by any other subject, be he eccelesiastical or temporal, without any exception, may take his remedy by the course of the law, and have justice and right for the injury done to him, freely without sale, fully without any denial, and speedily without delay."

In nearly all the states, the constitution declares that every person ought to have a certain remedy at law for all injuries to the person, property, or character; and to obtain justice freely without being obliged to purchase it, completely and without denial, promptly and without delay.

The right to strike is, under our present industrial system, a necessary safeguard and remedy. It is as vain to hope for the total elimination of strikes or lockouts, as for the total elimination of the necessity of self-defense and other forms of self-help. But this hostile, dangerous and wasteful method of enforcing demands ought to be used only as a last resort. If so, some earlier resort must be provided. Society is under an obligation to provide some alternative to this trial by battle, and to make some remedies available for the civilized appeal to reason, instead of the primitive recourse to arms. The aim should not be to prevent strikes at all hazards, but to supply some prompt, competent and impartial tribunal whose decision will ordinarily make them unnecessary, and which will make the public a party to the collective bargaining process.

As Blackstone points out, "Judicial and extra-judicial remedies are always concurrent where the law allows an extra judicial remedy."

Therefore, though I may defend myself or my relations from external violence, I am yet afterwards entitled to an action of assault and battery; though I may retake my goods, if I have a fair and possible opportunity, this power of recaption does not debar me from my action of trover and detinue. I may either enter on the lands on which I have a right to enter, or may demand possession by real action; I may either abate a nuisance by my own authority, or call upon the law to do it for me; I may detain for rent, or have an action of debt at my own option.

The extra-judicial remedy is exceptional. The judicial remedy must be granted wherever a right is invaded.

It is not suggested that there should be an exact likeness between our law courts and commissions or boards for industrial matters. It is true that some industrial and economic rights are capable of definition and judicial enforcement, as, for example, workmen's compensation. One measure imperatively demanded is genuine enforcement of the laws which we now have and the effective recognition of all rights, legal and constitutional.

But many of the most serious questions which arise relate to continuing future relations between more or less indefinite parties and under various and changing conditions. Mediation and conciliation leading to a just agreement between the parties would seem to be ordinarily the principal remedy, as pointed out by Professor James H. Brewster in an article in a recent number of the Michigan Law Review, entitled, "The Comparison of Some Methods of Conciliation and Arbitration of Industrial Disputes."

As Professor Brewster points out, under the so-called Erdman-Newland's Act, mediation and conciliation have proved more advantageous and have been more often resorted to than arbitration. This is not a compulsory arbitration law. So under the Canadian Industrial Disputes Investigation Act, the first object is conciliation, and when arbitration is brought about, public opinion is the sole compelling force. Under the Canadian Act, investigation with a view to amicable settlement of the dispute is the duty of the board. In fact, this investigation is compulsory, and while it is pending there is no suspension of the work. Investigation precedes the strikes or lockouts, instead of following it. Publicity follows investigation, and then, as a last

resort, the parties may exercise their rights of strike, lockout, etc. This procedure affords an opportunity of justly determining disputes by reason, rather than by force alone. The chief purpose is to provide means of investigation, discussion, conciliation and publicity and the settlements are in the form of agreements.

Compulsory arbitration, at the present time, seems impracticable and undesirable. Recent amendments of the Compulsory arbitration law of New Zealand emphasize its conciliatory and voluntary features. At the present time, our employers frequently refuse even to negotiate with the workers and claim an absolute right to run their business in their own way, and with reference only to their own interests. Where the parties refuse either to bargain or to arbitrate, compulsory official investigation at the instance of one of the parties or of a public official, when public interest demands it, will afford opportunity for getting at the truth and for placing the influence of the public on the side of justice.

In this new system of courts or commissions, the object of the trials will be administrative inquiry and ascertainment of the truth, rather than the mere preserving of the peace, by furnishing a modern form of trial by combat, conducted by highly paid legal champions. The remedy of the workers for their grievances will no longer lie exclusively in strikes, attended almost inevitably by force and violence, and the law will no longer content itself with attempting to confine labor and capital to "peaceable hostilities" in the fixing of wages, hours and working conditions on railroads and in other industries on which the public is dependent.

BRIEF QUOTATIONS

William Jennings Bryan

"The right to strike is a vital asset of the common people."

Senator Newlands

"We feel that the advance of civilization requires the substitution of reason for force."

Wm. H. Adamson, author of the Adamson Act

Albert Chandler

"Wages of railroad engineers have been increased by strikes 50 percent in the last 18 years."

President Wilson

"This situation must never be allowed to arise again." (The threatened railway strike of August, 1916).

President Gompers, President American Ferderation of Labor

"You cannot prevent strikes, and if you enact such a law you can count on me as one who will violate it."

Justice Harlan, Justice of the U. S. Supreme Court

"Involuntary service rendered for the public is not in any legal sense either slavery or involuntary servitude."

President Garretson, Railway Conductors' Union

"I wish to God I had never called off the strike order, for I believe there can never be a national strike now."

Eugene V. Debs

"The (President's) plan would practically outlaw the strike and paralyze the striking machinery of the labor movement."

"The employers and employes get together and make deals under which the public suffers. My purpose is to protect the public."

John Lundrigan, Annals, Vol. 48, p. 401

"Industrial disputes are about the only form of human contention in which the government does not arbitrarily compel adjustment."

Cedar Rapids, Iowa, Gazette, July 14, 1916

"The state has the right to declare that no body of citizens has the right to paralyze the business of all other citizens for their own gain."

Minneapolis Labor Rieview

"Any one who helps to put such a proposition, (compulsory arbitration) on the statue books is pushing humanity back into slavery and bondage."

R. M. Easley, National Civic Federation

"I am opposed to any law patterned after the Canadian Compulsory Investigation Act, because it will not fulfill the expectations of its advocates."

American Federationist, December, 1916

"It (compulsory arbitration) is a revolutionary proposition totally out of harmony with our prevailing institutions, and out of harmony with our philosophy of government."

President Wilson

"It is essential to have measures adopted which will prevent strikes and lockouts on railroads until there has been a full and public investigation of the merits of the dispute."

John Mitchell, Labor Leader

"In the case of railroads engaged in interstate traffic it might become necessary for the Federal Government to compel such railroads to arbitrate differences with their workmen."

XIII Amendment, U. S. Constitution.

"Neither slavery nor involuntary servitude, except as a punishment for crime, whereof the party shall have been duly convicted, shall exist within the United States or any place subject to their jurisdiction."

Chief Justice White (In Adamson Act Decision)

"To say that the national legislative body had no authority to enforce a settlement when the railroads and men refuse to adjust their differences would be to hold that private rights had destroyed public rights."

Samuel Gompers

"You may make strikes illegal and may make them criminal, but you are not going to avert strikes when strikes are necessary in order to express the needs of America's workers for a higher and better consideration of their rights."

Eugene V. Debs

"Under this (compulsory investigation law) a strike, if lawfully possible at all, would be robbed of its strategic advantages and doomed to inevitable defeat. A strike held up becomes as futile as a charge held up on a field of battle."

Bera, Calif., Progress, July 7, 1916

"A national board of arbitration appointed jointly by the International Typographical Union and the employers of its members passes on all matters of dissension between the employer and employe, and all parties must abide by the decision of that tribunal."

Delos F. Wilcox, New York

"If the employes of railroads and public utilities are to give up the ultimate right to strike and must rely upon the justice and mercy of the commissions, they will have to be prepared to go into politics to see that the commissioners are not selected and owned by the companies."

Wm. H. Coleman, House of Representatives, Jan 22, 1917

"It is in Australia and New Zealand that we find the most radical legislation along these lines. In New Zealand and the Colony of New South Wales we find compulsory arbitration of a pronounced nature, but strikes still continue and are quite as numerous if not more so than in our own country."

R. R. Arbitration Board

"The public utilities of the nation are of such great importance that their operation must not be interrupted, and means must be worked out which will guarantee that result. It is intolerable that any group of men, whether employes or employers, whether large or small, should have the power to decide that the country shall undergo great loss of life, unspeakable suffering, and loss of property through the stoppage of a necessary public service."

Annals, Vol. 44, p. 9

"The strike and lockout are crude, barbaric, and wasteful; they prove nothing of value, and settle nothing permanently; they show only which side is the stronger or has the greater power of resistance, not which side is right.

"On the other hand the settlement of differences in the enlightened manner proposed (the broadened Erdman Act) impartial investigation and publicity through a fair tribunal brings out the facts and establishes justice."

Sidney Low, Anti-strike Legislation in Australia

"The Australian Acts are intended to encourage rather than restrict collective bargaining, but to enable the parties to the contract to conduct their negotiations by diplomacy instead of war."

Ibid.

"A strike, like war, is a barbarous and inhuman expedient, and an injury to the common welfare. All parties accept the proposition that it is a misfortune which ought to be prevented by all possible means."

Ibid.

"Both labor and capital were agreed that state intervention and state regulation must be substituted for the destructive methods which inflicted enormous loss and injury upon the whole economic structure of the country". (The labor party at that time demanded compulsory arbitration).

E. C. Robbins (History of the Threatened Strike of August, 1916

"The press generally condemned the trainmen for not joining with the railroads in submitting the dispute to arbitration. The main issue was the 8-hour day but the railroads never offered to submit that. The proposal was so vaguely stated that the trainmen were afraid to trust it to arbitration.

"While the brotherhoods' case was pending the Switchmen's union petitioned for an 8-hour day and the matter was referred to arbitration, and the matter was decided chiefly in favor of the union before the holidays.

"On account of the delay of the decision of the Supreme Court, on March 12, 1917 another strike was announced for March 17. War was then threatening and the country was greatly agitated. After several days of agony the railroad managers yielded giving as a reason the danger of war. The Supreme Court announced its decision on March 19, sustaining the Act by a vote of 5 to 4."

TELEGRAMS TO PRESIDENT WILSON

What the Strike Would Have Meant in Colorado

The President:

Hundreds of fruit growers in this country who had thousands of cars of fruit ready to market, and on which their living expenses for the next year depended, give you full credit for preventing them from suffering a terrible loss had the railroad strike not been averted. This community alone could easily have lost a million dollars and suffered the worst business disaster in its history. Not only the fruit growers but citizens of all classes are grateful to you and congratulate you upon the success that crowned your firm, conscientious, and determined efforts to avert the great national calamity.

WALTER WALKER,
Editor, Daily Sentinel.

Detroit, Mich., Sept. 1, 1916.

The President:

The moment it is positively known that a strike will become effective on railroads the Ford Motor Co. will of absolute necessity shut down its factory and all its assembling plants throughout the country, and every man of its more than 49,000 workers will have to go off the pay roll. Our business is so organized that the supplies and product must be kept moving constantly. We can not move a day without railroad service. We are making 2,200 cars a day. The materials must be moved in and cars out. I sincerely hope something can be done to avert the strike. Your efforts are appreciated here and should be commended by every citizen in the country.

HENRY FORD.

DIGESTS OF VARIOUS ARTICLES

(These digests are derived from so wide a range of reading, and have been so often modified in the process of condensation that it is impracticable to give their sources. No claim is made for originality; they are simply arguments which are used. Statements of fact have been verified as far as possible; the debaters will test the correctness of the opinions).

1

Employes prefer striking to arbitration only because they think they can get more by it.

2

Usually when a man refuses to arbitrate it is because he knows that he has a weak case.

3

Trainmen strike because they know no better way to secure what they think are their rights.

4

Arbitration means fair, impartial arbitration; the affirmative is not advocating any other kind.

5

Without the right to strike the advantages of labor organizations would be practically nullified.

6

To gain an advantage by mere force is not fair. The public wants to know who is right; not who is stronger.

7

Compulsory arbitration is not substituting reason for force; it is merely substituting one kind of force for another.

8

In western Australasia, the home of compulsory arbitration, "Industrial Agreements" are taking the place of arbitration courts.

9

Do the trainmen actually propose to wreck the entire business of the nation unless their demands are granted, or are they only bluffing?

10

Labor is not in the nature of things economically free. The strike is its only weapon, the only remedy for its wrongs within its control.

11

At best compulsory arbitration would only be a compromise. It does not pretend to give labor its rights, but "splits the difference".

12

Employes surrender absolutely to the union when they join it and yet furiously object to a slight surrender to the government of the very same rights.

13

Every trade agreement restrains temporarily the right to strike. If labor refuse to make trade agreements how can society treat with it at all?

14

In Mexico they have the death penalty for strikes; but still they have them. This is not in the least surprising. In all ages men have done the same.

15

Colorado is the only state of the union which has adopted a compulsory arbitration act and there the Colorado Federation of Labor demands its repeal.

16

The right to quit work is as inalienable as the right to life itself. To compel a man to work at an obnoxious task is slavery; no casuistry can conceal that.

17

Compelling men to work is evidently impracticable. It would take more men to do the compelling than there were to be compelled. It would be civil war.

18

The question of how much the trainman should receive is not the only one involved; how much the public is able to pay is certainly of equal importance.

19

Even if men could be compelled to keep at work, their work would not be efficient. It would be a kind of convict labor. Efficient labor must be free in this country.

20

No one would think for a moment of taking away from the railway employes the power of self protection; yet that is just what they propose to take away from the people.

21

It is claimed that if a man has to work when he doesn't want to, it is involuntary servitude or slavery. There are plenty of folks who never work voluntarily; are they slaves?

22

Labor alone can do but little to secure recognition of its rights. By striking it compels the attention of the public to its wrongs and the public usually assists it in getting jsutice.

23

It is claimed that the Australasian laws have not prevented strikes. But it cannot be denied that they have limited both the number and extent of strikes; that is all we can ask.

24

The negative desires a solution of the strike problem as earnestly as the affirmative; but things are never settled till they are settled right. This is all the negative contend for.

25

Compulsory arbitration has been fairly tried; it has had ample time to demonstrate its merits. The uncontrovertible fact is that wherever it has been tried, labor is against it.

26

Arbitration is by no means the only alternative. Voluntary arbitration is often desirable and always to be urged and recommended. Compulsory investigation is another alternative.

27

The right to liberty is coequal with the right to life. Compulsory arbitration unblushingly proposes to take away from men the right to work when, where, and for whom they choose.

28

If railroad men can stop work when they will, then soldiers should be permitted to desert whenever they wish. The army is no more important to the country in war than railroads are in peace.

29

The man who opposes arbitration is not seeking justice but only his own interests. Even if seeking justice does not always secure it, would opposition to seeking justice be any more likely to secure it?

30

It is the big strikes which are the most objectionable and dangerous. But compulsory arbitration has never prevented the great strikes in Australia, Canada, or anywhere. It fails when most needed.

31

Compulsory arbitration gives employers ample time to engage strike breakers and have them ready. It brings no equal advantage to employes. It merely helps to defeat strikes, as the strikers see it.

32

The chief argument of the negative is that labor does not wish compulsory arbitration. The real question is not what labor or any body else wishes. The real question is, "What is right?" "What is best for all?"

33

Immigration is not flocking to New Zealand, especially laborers are not. Compulsory arbitration is not popular with laborers. We are seeking something which will satisfy the just demands of labor.

34

The negative claim that if a man contracts to work a month, making his keep his contract is slavery. If he entered into the contract freely and without compulsion it is free labor; there is no trace of slavery about it.

35

The negative do not state their alternatives; they do not dare to. If we do not arbitrate then what? What is left but recourse to force? Even if arbitration were always wrong in its results it is still better than fighting.

36

The only honest way to keep a man at a job is remove as far as possible its dangers and disagreeableness and pay him adequate wages. Compulsory arbitration is only a plausible method of avoiding these plain duties.

37

Parties to every other dispute are compelled to submit their differences to arbitration. Why should industrial disputes be an exception? Compulsory arbitration merely applies a principle long and universally recognized.

38

Those who employ labor would find it very convenient to have men compelled to labor regardless of low wages or unjust treatment. Compulsory arbitration proposes to put into the employers' hands the power to do this.

39

The negative are by no means indifferent to suffering caused by strikes, either to the public or to labor or to the employers. Any policy which is unjust to labor must hinder social progress; no wrong can be greater than that.

40

Do the trainmen claim that only their interests are to be consulted? That they must have complete control? Are they not only saying in effect, "The public be d——d", but taking

steps to carry out the imprecation?

41

Everybody else must submit to laws and restraints for the public good; why should not trainmen? While their acts may bring ruin and untold suffering upon others, they protest against any law which would restrain them.

42

Thirty years ago labor was demanding arbitration and capital opposed it. Now capital generally favors it while labor opposes. Why is this? Labor has tried it faithfully, and has found that it does not secure justice.

43

All individual rights are subordinate to the rights of the public. No one disputes this or can dispute it. The right of the trainmen to strike is insignificant in comparison with the rights of the public endangered by the strike.

44

Some employers demand the right to dismiss employes without notice and yet deny their employes the right to quit without notice. Such employers ought to be compelled to arbitrate; they are lacking in a clear sense of justice.

45

The Thirteenth Amendment forbids involuntary servitude. Compelling a man to work against his will is involuntary servitude. Compulsory arbitration is an ill-concealed attempt to compel men to work against their will.

46

Every other human being must submit to arbitration; why not the laborer also? Even if his position is exceptional he is still a human being; that establishes the presumption that he should submit to arbitration like the rest of us.

47

Arbitration cannot take place on any basis without a virtual admission of the validity of that basis. For labor to consent to arbitration under present conditions is to ask him to consent to riveting the bonds he is trying to break.

48

Arguments for arbitration seem plausible; they look fair. But when we know perfectly well that disinterested arbiters cannot be found the demand for arbitration is a fraud and a delusion. Unfair arbitration is not arbitration at all.

49

The employers and the public are interested only in preventing strikes: labor is interested in preventing the causes of strikes.

The public enlarges upon the woes occasioned by strikes; labor experiences the woes which cause the strikes.

50

The right of the public to control the railroads is already conceded but every argument for such control applies with equal force to the trainmen. That the public should not control a public utility is absurd, a contradiction of terms.

51

Employes object to compulsion when applied to them. But what is a strike but coercion of the worst kind? Nearly always some of the strikers are compelled to strike; and the sole object of the strike is to compel the employers to yield.

52

The New Zealand law is founded on the principle that when public interests are affected neither the employer or employe is an entirely free agent; that personal liberty ceases to be liberty when it interferes with the well being of society.

53

Arbitration itself is not perfect but it is as perfect as anything human can be. The imperfections are in the arbiters. If the parties to a dispute select poor or corrupt arbiters, the blame rests on them, not upon the principle of arbitration.

54

The law requires the railroads to keep going; they must carry the mails, etc. But how can trains go without trainmen? When a man accepts employment on a railroad he accepts whatever responsibilities and duties that employment involves.

55

Wages in any business should be proportional to the rights of all concerned. Trainmen cannot be paid what they want without making freight and passenger rates intolerable. Those who use railroads have rights as well as those who run them.

56

Men used to refuse to arbitrate their private differences till the law compelled them to. We have reacht the point where the law must say the same to groups of men. It is a natural progression, and we must choose between it and anarchy.

57

It would take but three days to reduce the poor of New York to starvation if the railway service were stopt. Why then should the public permit it to be stopt. The poor of a great city have nothing to do with the controversies causing the strike.

58

The efficiency of labor union depends upon its ability to

strike as unorganized workers cannot. This is shown by the fact that only one-fifth of the railroad workers belong to unions, but this one-fifth receives nearly one-third of the wages.

59

The affirmative has no moral right to demand compulsory arbitration unless they can furnish impartial, disinterested arbiters; this they cannot begin to do. They are demanding arbitration where fair and just decisions are impossible.

60

All experience shows that a law to be successful must be in conformity with the sentiments, ideals, and traditions of those for whom it is designed. A compulsory arbitration law is in contradition to all these, at least for American workmen.

61

The laborer claims that decisions go against him. In every arbitration one side must lose. His claim amounts simply to refusing to throw the dice unless they are loaded in his interest. He would either rule or ruin; he wants his own way or none.

62

Some rights are "inalienable"; cannot be surrendered for any reason whatever. Among these are the rights to life, liberty, and the pursuit of happiness. Those who favor taking these away from labor would not think of giving them up themselves.

63

Workmen feel that they have a right to a larger share in the profits of their labor. They sometimes barely live while their employers riot in luxury and revel in extravagance. And they have no weapon against such conditions but refusal to endure them.

64

In the Adamson Act decision the Supreme Court went out of its way to make it clear that Congress has the power to provide for compulsory arbitration in interstate railway disputes. That entirely settles the question as to the constitutionality of such a law.

65

If a laboring man cannot contract to labor what contract can he make? Will the negative take away from labor the right of contract? What else do they do when they construe a labor contract as slavery, and then argue that the constitution forbids slavery.

66

It is a fundamental and elementary principle of justice that the arbiters in a dispute should be disinterested. It is perfectly

evident that in labor disputes disinterested arbiters cannot be found. Arbitration under such conditions is a farce on the face of it.

67

If the decision of the arbiters in against the employer he only loses a little profit which he can usually recoup in some other way; but when it goes against the laborer he loses things which are essential to life itself. The conditions of the arbitration are not equal.

68

The fact is that the state cannot ignore the rights of the individual worker without ruin to itself and all who compose it. The individual worker is the unit with which social units are builded. We cannot crush our bricks and then build a strong wall with them.

69

Public service involves steady service; any other kind is futile. The public pays for that kind of service, and its patronage furnishes the opportunity for employment. If the rights of the public are assaulted or ignored, it is the plain duty of the public to protect them.

70

It is a fundamental principle of our institutions that no man's liberty shall interfere with that of another man. Compulsory arbitration takes away no liberty which any good citizen should exercise. It merely takes away liberty to conspire with others to injure the public.

71

All disputes must either be arbitrated or the parties must fight it out, unless the side that consents to arbitrate will yield to the side which refuses. The trainmen wish every other interest to yield to them. If every body took that position what would become of us?

72

The threat of complsory arbitration is a bluff on the face of it; but railroad men are not the kind it is safe to bluff with. Men who are facing danger every hour are apt to be courageous men. Compulsory arbitration has never been enforced anywhere, at any time; it cannot be.

73

The negative claim that our system of government provides no power for preventing industrial war. The preamble to the constitution declares that its purpose is "To establish justice, insure domestic tranquility," etc. Are strikes compatible with

"Domestic Tranquility"?

74

It is claimed that the unions do not represent all labor. But the unions are not injuring other labor when they secure for all labor better wages and working conditions. And even if only the unions were bettered what hinders non-union labor from joining the unions?

75

Strikes must be made while the iron is hot. Compulsory arbitration would force delay till the iron was cold. You cannot make a compulsory arbitration law that employers could not take advantage of. Its effects are all in favor of the employers and against the employes.

76

Enforced working for the public is radically different from enforced working for individuals. The workman himself belongs to the public he works for, and so does his family and his friends and associates. All this talk about about involuntary labor is mere sentimental sophistry.

77

Everybody agrees that employes have rights; this is conceded fully and frankly. But the public has rights too, and even the employers have some. The affirmative demand that all these rights shall have full consideration, and an arbitration court is the only possible way to do it.

78

No vote for a strike is ever unanimous. The minority are forced into it by the very ones who are howling against the force in compulsory arbitration. How can we believe that the union's opposition to compulsion is sincere when they use compulsion against their own members?

79

The right to life and liberty comes first; nothing can be allowed to abridge or abbreviate that. If it is necessary to control labor, some other way must be found. There is no mistaking the purpose of compulsory arbitration,—it is to take away from men the right to quit work.

80

The negative object that a delay before a strike would give the employers time to gather strike-breakers. This is specious reasoning. If the result of the arbitration was against the employers they could not employ strike breakers; if it was in favor of the employers they would not need to.

81

Many multimillionaires have secured the bulk of their wealth by manipulating railway properties. Hundreds of stock gamblers live off of railroad earnings without rendering any essential service to them. If the public tolerates this they ought not to object to the trainmen getting their due share.

82

If workmen surrender the right to work or not work as they may choose, they have surrendered their last and only weapon of self defense. They would then be at the mercy of their employers or of arbitration boards. In themselves they would be helpless. We have no right to ask such a thing.

83

It is said that compulsory arbitration is a success in Germany. That proves absolutely nothing. In Germany laborers have no liberty. Compulsory arbitration cannot take away liberty where there is none. In this country liberty is priceless. Every true American says, "Give me liberty, or give me death".

84

Doubtless arbitration sometimes fails to establish justice; nobody denies this; but it succeeds far oftener than any other method which has ever been tried. If arbitration secures justice oftener than any other means then the duty of using it is absolute; as much so as if it always secured justice.

85

It used to be the employers who said "There is nothing to arbitrate"; most of the objections to arbitration came from them. Public opinion and legislation have driven them from that position, and now employes are taking the same ground. It is a short-sighted policy for public opinion will not change.

86

The Erdman-Newlands Act has been more successful than any compulsory arbitration act has ever been. It has been applied in 126 cases and succeeded in 125 of them. Its purpose is conciliation and mediation. This is not only successful in preventing strikes but it is universally favored by labor leaders.

87

Who is it that wants arbitration of labor disputes? Not the laboring men; they oppose it. The demand comes chiefly from those who are not directly interested in the controversy, who are merely inconvenienced a little by it. It is not fair for them to force arbitration on those who have everything at stake.

88

Those who favor compulsory arbitration must consider the

almost certain result if laborers are compelled to go into politics to elect administrators of the law who will favor them. Then the compulsory arbitration might be against those who now favor it. Compulsion is a dangerous thing in a free country.

89

It is a fact that labor has never got its full rights; it is a fact that the public is very largely indifferent to the wrongs which labor suffers; it is a fact that the public never lifts a finger to bring justice to labor unless labor begins the fight; the public cannot claim that it has done anything like its full duty to labor.

90

We have here a case simply of conflicting rights. The negative argue as tho there were no such thing. When rights conflict there is no other right or just course but compromise; each side must yield something. If they refuse to yield they must be compelled to, both for their own good and for the welfare of all.

91

The compulsory law is a failure in Canada. Out of 120,000 trainmen, 30,000 have struck in spite of the law and its penal clauses. The Trades and Labor Congress in Canada demanded its repeal in September 1916. Its chief champion admits that "there are not enuf jails in Canada to hold the violators of the law."

92

In a great strike the railways can always hold out the longest. The trainmen know this but they think that the public would in the mean time suffer so much that it would compel the railroads to grant their terms. But is there not some possibility that the wrath of the publicmight sometimes be turned against the trainmen?

93

To the employer in every arbitration there is only the possibility of losing a little profit or suffering a little inconvenience. But to the employe there is always the specter of hungry wife and starving children. To compel such a man to submit to arbitration where he feels that he has no chance for justice is an outrage.

94

A strike is not war against society. It is simply men refusing to work without satisfactory compensation. One man's quitting would be useless and effectless; but tho two men or a dozen men quit at the same time their acts are individual acts.

The only objection to the dozen quitting at once is that it is effective.

95

In case of a general strike the public would suffer more in a few days in the aggregate than the trainmen would suffer in years from the wrongs they strike against. To save themselves from a little wrong or injustice they would inflict an immeasurable wrong upon the public. That sort of spirit does not commend their cause.

96

In an arbitration between a railroad and its trainmen a few years ago, after the decision had gone against the men it was claimed that two of the three arbiters held stock in the railroad. Trainmen do not have access to the private relations of business men and are always at a great disadvantage in selecting the third arbiter.

97

Everywhere capital is combining. It is claimed that trusts and combinations are expedient and profitable (to capitalists). But when workmen combine it's simply awful. Many say, "Certainly, let workmen combine, but when they combine they musn't do anything; they must act as individuals; they must not act together."

98

The "domestic tranquility", the real prosperity, the permanent security of the state depends ultimately on the condition, the happiness and contentment of the laboring men. When the state yields a little to the interests of labor it is enriching itself. You cannot put the state into competition with labor without loss to both.

99

Laboring men have found as a matter of actual experience that when they have submitted their cause to an arbitration court they found the jury packed against them. To compel a man to submit his cause to a prejudiced court is to decide his case in advance. The arbitration advocated is not in reality arbitration at all.

100

A great railroad strike such as was threatened in 1916 would cause losses running into hundreds of millions, and would cause immense suffering and many deaths. Such a strike involves many elements of robbery and murder on an almost unlimited scale. Have the people no right to protect themselves? What is government for?

101

The decision of the Supreme Court in the Adamson Act case was that Congress has the constitutional right to provide for compulsory arbitration in interstate railway disputes; but the decision was 5 to 4, and the changing of one judge would reverse it. In the judgment of four of the justices such compulsion is not constitutional.

102

The looting of the New Haven, the Rock Island, the Frisco are still fresh in the memory. The Santa Fe and Pacific railway scandals, and many others are not yet forgotten. Today many railways are paying dividends on stock which is part "water". All these require so much money that the trainmen cannot get what they really earn.

103

To the employer the right to strike merely involves this or that particular case of employment. To the laborer it means liberty to choose life conditions, which may mean as much or more than life itself. When, then, employer and employe arbitrate, they do not and cannot arbitrate the same thing; this is one reason why it fails.

104

We boast of our liberties in this country, but what liberty remains for a laboring man without property if he cannot quit work or change masters when he finds it to his advantage to do so? Compulsion is the opposite of liberty; compulsory arbitration is only a scheme to limit the liberties of workingmen, who already have little enough.

105

Even if arbitration were always successful in securing justice it would only be doling it out a little at a time to scattered individuals. What the laboring man wants is the recognition of fundamental principles, of what he deems to be the rights of labor. He is not content with crumbs when he needs a loaf and feels that he has a right to it.

106

In every arbitration the employer can employ shrewder counsel; he is sure of getting his case presented with the maximum of effectiveness. The employe cannot do this and he knows it. Even if arbitration were always fair, he is not able to avail himself of it on anything like equal terms. To force it on him, then, would be the grossest injustice.

107

Arbitration is not only the most likely way to obtain justice,

but it is usually the only way; it is the last resort. All must admit that submitting a case to good, capable, impartial arbiters is the best possible plan for securing justice to all concerned. The only objections to arbitration that will hold at all are not against it but imperfections in its use.

108

As a rule the laboring man is not as well educated as his employer and his advisers. It is clearly impossible for labor to choose from its ranks arbiters equal to those who will be arrayed against him in persuasive ability on which the decision largely depends. Labor objects to compulsory arbitration because its conditions cannot be made equal and fair.

109

The object of compulsory arbitration is not to compel men to work against their will, but to prevent the violence which is sure to follow. This is the "nigger in the woodpile". It is not only the quitting work that we object to,—we might grant that right,—but the rioting and violence the strikers resort to in trying to keep others from taking their places.

110

Arbitration is an attempt to find out what is right; and even if it sometimes fails it often succeeds. Fighting does not even attempt to find out what is right; it can only prove who is the stronger. As to whether the managers or trainmen are the stronger the public does not care a straw; but in spite of all opposition it will find out who is in the right.

111

To say that no arbiter will decide against his own interests is to slander our opponents themselves; they do it often. They are practically arguing that there are no honest men. Such an argument proves too much. It would make both sides dishonest and arbitration even more necessary. For such to denounce arbitration is merely the pot calling the kettle black.

112

Money can employ the very best attorneys; no one questions that. Money can offer rewards for unjust decisions which poverty cannot; that cannot be questioned. Employers are few; they can manipulate. Laborers are many; they can have no secrets. Under such conditions an arbitration is an unequal contest; and should not be forced on the worker.

113

If we forbid men to quit work unless they submit their reasons to arbitration; then in all conscience we should forbid employers from discharging men without the consent of arbiters. A strike

is no more calamitous to employers than a discharge is to employes. A strike only threatens profits, but a discharge threatens the lives of the employe and his family.

114

The right to strike is not what the trainmen are really contending for, but the right to fight strike-breakers, to destroy railroad property and endanger the lives of any who dare to travel while a strike is on. Without such things a strike is futile folly. The public might not care to prohibit striking, but it must prohibit the violence which accompanies it.

115

A proposal to endorse a compulsory arbitration law is regularly voted down every year by the American Federation of Labor, the greatest labor organization in the world. A compulsory arbitration law never has been enforced and it is easy to see that it never will be. It is enforced only when labor voluntarily consents to it, and then it is not compulsory.

116

The negative object to being compelled to work when they do not want to. The duty of every man to work is universally admitted. We arrest and imprison men for idleness and vagrancy. A great authority said, "If any will not work, neither let him eat". This talk about compulsory labor is all rot; the compulsion to work exists in the very nature of things.

117

There is a great question at issue here. For labor, the power to strike is the last ditch. With that gone they would no longer be freemen. The affirmative argue in vain; no congress, no court, no power on earth can force compulsory labor on American workmen. The affirmative have had fair notice; if they force this legislation upon labor there will be war.

118

Arbitration is a choice of evils. That there are objections, even serious ones, counts for nothing. Our obligation is not to achieve perfection, but to do the best we can. If arbitration is the best means of settling disputes, objections that it is imperfect are childish. On that principle we would never drink water, breathe air, or eat food, for everything has imperfections.

119

In case a general strike should have begun President Wilson asks Congress to empower the executive to take over the railways and draft enough workmen to operate them. He already has this power in war times, so it introduces no new principle. In the last extremity it would save the public interests. It would

be the same kind of compulsion that soldiers are now under.

120

When labor consents to arbitrate with capital it admits for the time that both stand on the same platform and have equal claims before the arbiters. But this labor cannot admit. In its view, capital and privilege are its oppressors. The lamb does not wish to arbitrate with the wolf; it wishes to escape altogether. Any arbitration whatever would be a loss to the lamb.

121

All the most enlightened and civilized are now demanding that even nations shall arbitrate their differences; for however objectionable, it is far better than war. How can labor join with the rest of humanity in demanding arbitration when it refuses to submit its own controversies to it? It is a poor time to oppose arbitration; it is not in keeping with the spirit of the age.

122

The Sherman Act recognizes that things which men may blamelessly do individually are criminal if done in "combination". Individual acts may often be impulsive, but conspiracies are always deliberate. Men are not hung for murder, but for the "malice prepense and aforethought" which precedes. A strike is a conspiracy and cannot be judged as individual acts are.

123

Employers must meet competition or quit business. It is evidently impossible for strikers to attack all competing employers at the same time. Every strike, then, diminishes the employer's ability to meet competition, and it is an axiom that no man can pay more for anything than his competitors pay without going to the wall or at least losing power to employ labor.

124

The public must pay the cost of the strike; pay all damages if property is destroyed; pay the increast wages if the strike succeeds, and besides bear all the loss to business, and interference with the life of the people. We can almost admire the gall which demands that the public shall have no right to be heard, that it has no rights which labor can be compelled to respect.

125

When the public suffers from labor struggles let it remember that it acquiesces in a condition or system where manipulators and false officials rob railroads of millions, and when was one of them ever sent to jail or made to disgorge? If the public insist that railroads should be permitted to earn enuf to support such a

system why should they object to labor having its full share of what it earns?

126

It is notorious that the suffering in all fighting cannot be confined to those who caused it. Sometimes the innocent are almost the only sufferers, and in labor wars the immediate parties to it are often the least sufferers. And the final result is often utterly irrelevant, for it shows not who is right but who is the stronger. What excuse then for causing the suffering of innocent parties?

127

The railways can only pay more wages by charging the public more. But the law will not let them do that without the consent of the Interstate Commerce Commission. That puts them between the devil and the deep sea. It is rank injustice to the railways. The trainmen cannot demand or expect justice unless they are willing to grant it to others. They do not "come into court with clean hands."

128

What is the use of compulsory investigation if you dont intend to do anything after the investigation? It it a fraud and a delusion unless it can be adequately followed up. Investigation is for the purpose of guiding action. If you decide in advance that you wont do anything, why investigate? Why prepare to do something? The negative alternative of compulsory investigation is no real alternative at all.

129

Compulsory arbitration cannot be enforced. Suppose 400,000 train men had struck in August 1916; could that many men have been put in jail all at once? It would have meant civil war of the very worst character. Compulsory arbitration is not only wrong and inexpedient but it is impossible. If small bodies of laborers are forbidden to strike, they would unite into bodies so large that they could not be resisted.

130

Mr. Gladstone once said: "In the beginning of every great fight for the right and for progress, the leisured classes, the so-called upper classes, have been on the wrong side of the battlefield." This is the fundamental trouble,—labor cannot believe that its opponents are acting in good faith. When the capitalist demands that labor shall arbitrate whether it shall lose its eye or its hand, labor refuses to lose either.

131

Arbitration might be all right where the issues are so limited

that arbiters could be found who would not be adversly affected by their decision. But no such arbiters can be found in a railway labor dispute. Even if he is not directly and personally concerned in the exact issue, he is in similar ones. He either works for wages or employs those who do. Why argue for arbitration when it is clearly impossible?

132

The decisions of arbiters are usually based upon and are applications of principles which labor cannot accept. The labor leader holds that the whole organization of society perpetrates wrongs upon labor. It is the application of those principles by the employer that causes the strike or dispute. Labor objects to compulsory arbitration because most decisions are determined in advance; it knows just what to expect.

133

The affirmative argue that the trainmen do not have to work on the railroads; that they can seek other occupations. But suppose the trainmen could not get other jobs? What would they do when they began to be hungry and naked? The man who cannot live off the labor of others has to work himself; there is no escape. If he does not work for railroads he must work for something else where conditions are no better.

134

There are many disputes where labor would gladly consent to arbitrate and it has done so often. Where the issues are clearly between the parties to the dispute, and where both sides agree as to the principles involved, labor would not hesitate to arbitrate. But the question proposes that labor shall be compelled to arbitrate every dispute of whatever kind, and regardless of whether impartial arbiters can be found or not.

135

One trouble is that the public has very vague ideas of what is "social justice"; what is a just wage? Compulsory arbitration is out of the question until we have made greater progress in social justice. We offer boundless rewards to the manipulator and speculator, rewards for which they perform no equivalent service. We have no right to enforce compulsory arbitration till we can guarantee that it will secure justice.

136

The public cannot be expected to risk destruction in order to satisfy a demand of trainmen which they refuse to arbitrate. The very refusal is equivalent to telling the public that they will not trust it to do justice; that they will not believe its professions; that it must suffer in silence what labor see fit to inflict.

Well, trainmen had just as well understand first as last that the public is not going to submit to any such tyranny.

137

If labor will be reasonable and fair the public is disposed to be generous with it. This has always been the case. But if labor takes the "public be d——d" attitude, such a hostile bearing can bring but one result. Whatever labor's technical rights may be it would be better policy for it not to try to fight the whole human race; it may need friends in the future as in the past. Labor is very important but it is not the whole thing.

138

The issues of labor disputes have so wide scope and application that every one is affected by them. Where one's interests are affected he cannot be said to be disinterested. In settling a railroad strike for example, if the arbiters decide in favor of the laborers they must pay higher charges themselves,—the decision is against themselves. Yet men have the gall to demand that laborers should submit their cause to such arbitration!

139

Compulsory arbitration is the "stitch in time"; it forces negotiations before war is declared; it puts out the fire before it gains great headway; it prevents the bitter struggle by compelling a decision before the parties have gone too far. When matters have progressed far enuf for a strike, compulsion is used anyway. It is better for all concerned that it be used by impartial judges than by the angry parties to the controversy.

140

The negative talk as tho compulsory arbitration was a one-sided affair. It is not. It prevents lockouts and arbitrary dismissals which employers have always practised. "Nothing to arbitrate" has been a very common reply when employes demanded arbitration. But most employers have intelligence enuf to see that they must yield to the public demand and because they are generally doing this, employes oppose the public will.

141

The negative demand that labor shall be subject to no law or restraint whatever; that it should do as it pleases regardless of the rights of others. On such a theory human society would not be possible. If every other class made the same demand what would become of us? The very kindest thing society can do with those who make such demands is to compel them to arbitrate; there is no other way to protect the rights of others.

142

When a striker continues at work he does so not for the sake

of the company, but for the sake of the public. Rather than cause so much useless and undeserved suffering he should be willing to continue at work temporarily. President Wilson's suggestion that in a great strike the government take over the railroads and draft the trainmen to run them would bring out this truth more clearly. The suggestion is well worth considering.

143

The modern laborer would repeal the divine command, "In the sweat of thy face shalt thou eat bread". That might be "involuntary labor". The trainmen would make a sentimental war-cry of "involuntary labor". The fact is we all have to labor whether it is voluntary or involuntary. The necessity for labor is absolutely inescapable. Labor does not really object to work but they wish to "work" the public. They dont want that prohibited.

144

A strike attacks the public more than the employer. Yet the employes would deny to the public the right to a voice in self-defense, or to any consideration whatever. A more outrageous attitude or policy was never assumed in the whole course of history. Those who encourage labor in such an attitude are its worst enemies; for if labor is indifferent to the public rights the time must come when the public will be indifferent to labor's rights.

145

In August 1916 the United States faced one of the most appalling catastrophes that could threaten it. Not a single proposal of the negative would prevent the recurrence of such a crisis. A labor organization held up the American people and coerced Congress into doing what it wished. The negative defend this condition and urge us to submit to it, any yet they claim to be loyal to our institutions and to believe in the rule of the majority.

146

It is the very essence of civilized society that individual rights must be subordinate to the rights of the public. Even if a man lost rights by arbitration he is not necessarily wronged. If the arbitration benefits society he would in the long run be benefitted also, for no possible arbitration can be as bad as anarchy. It is evident that those who are right in a controversy are less apt to lose by arbitration, so there is no good reason why they should oppose it.

147

The trainmen must either submit to arbitration or find a better alternative. They dont do it, for there is none and they well know it. In the case of labor disputes it is either arbitrate or worse. It is either arbitrate or make the innocent public suffer more than either party to the dispute. They say justice would be an alternative to arbitration, but that is the very object of arbitration. They want justice but are opposed to every practicable way of obtaining it.

148

Labor has struggled from slavery, serfdom, and peonage to its present status. It is hard for those who worship precedents to see what the rights of labor really are. All the concessions have been resisted or grudgingly granted, and many still claim that because labor is getting more now than it used to, it is getting more than it deserves. The precedents are against labor, and labor cannot consent to having its present rights and needs judged by discarded precedents of the past.

149

A strike is not an end. It only turns all the devils loose. The strikers do not win all the strikes. Many are complete failures, and nearly all are failures that are not supported by public opinion, the very public opinion to which the opponents of compulsory arbitration are so indifferent. A strike is a desperate war whose issue is very uncertain. If they always resulted in victory for the strikers we might more readily excuse the trainmen for opposing all efforts to prevent them.

150

While technically an arbitration is between the employer and employe it is reality between the employe and society. The employers would show the arbiters that they could not do differently under the conditions which society imposes, and would win their case; whereas the real contention of the employe is against the social conditions which are not being arbitrated, but taken for granted. It is proposed to compel the employe to arbitrate where his real contention is not even considered.

151

The negative dodge the essential issue: What is the public to do when the railroad managers and trainmen disagree? They are actually proposing to put the power of life or death for the rest of the country into the hands of a labor union to be decided by a secret vote! A great railway strike cannot continue; they know that, and yet they refuse to do anything to prevent it. They are arguing that the railway employes must

be free to inflict such a ruinous calamity on the country if they see fit.

152

Note that the question is limited to public utilities which exist only to serve and benefit the public. The affirmative is not favoring compulsory arbitration in private disputes even tho the public might be greatly injured by them. The affirmative is advocating compulsory arbitration only in disputes where the public is the party chiefly interested, and where its rights are paramount. It favors laws to compel both employers and employes to respect the rights of the public which employs both of them.

153

Compulsory arbitration is in naked reality "Prohibiting of Striking". The workmen see this. A strike is not a strike unless it is sudden; it would only be a "push". When due notice of a strike is given there is ample time to prepare for it and minimize its effect. All arguments for compulsory argitration are aimed at strikes; that fact cannot be hidden. Striking is the real and only issue; it cannot be disguised however much its advocates may try. Let that fact be kept in mind thruout this discussion.

154

Compulsory arbitration is only proposed as a last resort,—to come after everything else has been tried. It does not oppose voluntary arbitration, or preliminary investigation, or any other means whatever. Absolutely the only alternative to compulsory arbitration is war. If it involves force, its alternative involves greater force; the difference is that in the strike or lockout one party to the controversy is using the force for selfish ends, and in the other the public is using the force for the common benefit of all concerned.

155

A strike is not a peaceable act, nor is it meant to be. It involves preventing others from taking the strikers places, and this means assault, violence, and often arson and murder—mob law, or a return to barbarism. A strike merely to allow others to take the vacant places would be a self-evident fiasco. A strike is utterly futile unless it stops the trains, the mails, travel, traffic, the means of getting food, fuel, and all the necessities of life. It is vain to talk of a peaceable strike; there is no such thing.

156

A strike is not merely quitting work; if that were all it meant

it would be a childish performance. The implications of a strike are as clear as they are untenable. Altho the striker voluntarily gives up his job, he claims that it is still his, and that he should be permitted to resume it at will. He wants to eat his cake and still keep it. Further, the striker means to defend his job from all comers. He will neither fill it nor permit anyone else to fill it. A strike involves attacking strike breakers with any degree of violence.

157

What do we mean by "right" or "wrong"? It is often very difficult to determine. Sometimes what is right for one is wrong for another; what may be right under certain conditions might wrong under others; circumstances sometimes alter cases. In such situations nothing could be more irrational than appealing to force. Resorting to arbitration at least means that the parties wish to know what the majority of the arbiters think is right; but if they fight it means that they do not care what is right; each merely wishes to win.

158

Australasian compulsory arbitration laws were popular for awhile and seemed to promise good results, until employers learned how to use them to their own advantage; now the friends of labor who favored them most are demanding their repeal. All the arguments the affirmative are quoting from Australia and New Zealand are from 5 to 10 years old. Those who are advocating compulsory arbitration there today are only those who profit by it, and none of them are the laboring men. There are more strikes there proportionally than here.

159

The strikers know that they cannot seriously injure the railway owners. They do not expect to injure themselves; on the contrary they expect to better themselves,—that is the very object of the strike. The only party who really suffers, then, is the public, and it suffers without reparation or compensation; and yet the negative say that the public has no right to defend its interests or protect its life. Well, if the negative is not amenable to reason and justice, the public must assert its rights. The public patience will not last always.

160

A strike must be judged not by a few mere technicalities, but by all the implications and purposes involved in it. A strike means to burn the mill, murder the owners or strike-breakers, or do anything to make the strike win. That all strikes do not go this far does not change in the least the actual nature of a

strike. A mob often stops short of volence, murder, arson, but nevertheless the law must hold a participant in a mob guilty of all that may result from it. A striker does not know, and often does not care what the strike may lead to.

161

The affirmative seem to hold that the interests of the public are paramount to every other consideration. This is the infamous German doctrine which chiefly caused the great war and also the German barbarities. The state is as much bound by moral laws as the individual. It cannot ignore the rights of the individual without itself degenerating into barbarism. That is the trouble with compulsory arbitration; it will only work in Germany where the individual has practically no rights, and the state can do anything it finds to its interest.

162

The affirmative urge that strikes are unpleasant, inconvenient, and generally undesirable. All right; give the workmen some other weapon that he can rely on, and he will gladly accept it. Strikes hurt the workmen as much any others; he would be glad to have a better weapon. He does not want to strike; he only wants self-defense. He wants a voice in determining what he works for; a voice in determining his place in the world. He is not a slave or a serf, but a man; and as much of a man as any other human being; he must have the rights of a man.

163

The real trouble is not strikes but the reasons for striking. To prohibit striking without removing the causes is intolerable. The laborer claims that he is not getting a due share of the results of his labor, and many economists agree with him. The public is indifferent to the laborer's complaint, but sets up a great howl if labor causes it any inconvenience. While the public is indifferent to the wrongs of labor it cannot claim to be an innocent bystander. One reason for part of the public's indifference is the fact that it profits by low wages paid to labor.

164

If it be true that the laborer is not getting his share of the wealth produced by his labor as the labor unions claim, to ask him to consent to arbitration on that basis is asking him to acquiesce in his present condition and fight it out there. The thing that labor wants is to overthrow the basis which he claims is unjust. The laborer does not wish to fight his employer but the system under which he is being robbed of his just rights. Under present conditions he can only reach that system thru

his employer who usually defends it and must defend it or quit business.

165

A law which forbids men to strike even for one day is clearly unconstitutional. If striking is prohibited pending investigation, for that time at least the employer has the employe at his mercy. The laborer cannot strike however he may be treated; whatever injustice he receives he cannot resent it by quitting his job. He may be offered better jobs at better wages; changes in family conditions or business relations may make a change a dire necessity; but come what may, not a workman involved can quit his job as long as the employer can postpone or prolong the investigation.

166

No one questions, or can question that the public is a third party to all disputes between capital and labor. The public numbers millions where the other two parties number hundreds. The losses to the business part of the public are often enormous. Both employers and employes are servants of the public whose patronage and support they subsist. This public, then, has a right to be heard and to have its interests considered. Those who oppose compulsory arbitration must provide for the public interest in some other way or stand convicted of indifference to the public good.

167

The arguments for compulsory arbitration are similar to the ones they used to use for slavery. Capital favored it. They argued that slaves were better off under slavery; safer, better fed, and better clothed. But the slave was deprived of liberty. He had nothing to hope for, nothing to live for, no motive for self improvement. Without freedom he could have no real happiness. Because strikes are inconvenient to employers and sometimes to the public, the affirmative would take away from labor the most priceless possession in human life. You can't reason with an American about that.

168

The chief argument of the negative against compulsory arbitration is that it delays the strike and gives the employer time to prepare for it. Exactly the same objections applies to compulsory investigation; it would give the employers time to prepare. So the employes are denying the public even the right to investigate their acts and demands. They demand that the public should meekly submit to whatever labor sees fit to demand and ask no questions. Such brazen effrontry, such un-

restrained tyranny was never before proposed in these enlightened days. It is intolerable; unthinkable.

169

It is a well known fact that employers pay the lowest wage at which they can get satisfactory labor. When a man with a family gets out of employment he soon gets desperate, and will work for anything almost. When two equally competent men want a job the man gets it who will accept the lower wage. When a man asks $3.00 a day, the manager asks "Why should I pay $3.00 when I can get all the men I want for $2.50"? Until the labor union came all labor worked for the lowest wage, and would do so still but for the unions. The union has but one weapon,—the strike. Take that from him if you dare.

170

A man who joins the army or navy of his country is not free to quit when he will. This is true whether he volunteers or is drafted. A man who accepts public service surrenders his private right to the public interest. The man who is working for the public is working in part for himself. Compelling him to remain in that service is in part like compelling him to support his family or pay taxes. Service to a public service corporation differs only in degree from military or naval service and private rights are similarly restricted. Compulsory arbitration is very mild compared with the court martial and firing squad.

171

It is evident that a dispute between a public service corporation and its employes is of a different type from those where the public is not affected. We have already decided that public service corporations shall not have full control of their property nor make freight or passenger rates without supervision by the state. Even the most elementary fairness requires that those who work for such corporations be similarly restricted. The rights of the public are paramount. A man is not compelled to work for a public service corporation, but if he voluntarily accepts such employment he must accept the obligations and restrictions necessarily involved in it.

172

Arbitrations of labor disputes do not go deep enough; they cannot touch the real issues. Not only that but they tend to prevent any consideration of the real issues. Labor might readily admit that the employer could do no better under existing conditions but that would not make its lot any more endurable. To attempt to arbitrate a particular case is to sidetrack the main issue. Would an employer consent to an arbitration where the

arbiters were at liberty to find for the employe by declaring economic conditions wrong and laws unjust? Labor refuses to submit to compulsory arbitration because neither the whole issue nor the real issues are ever offered for arbitration.

173

The modern workman seldom gets the ear of his employer. The owner is replaced by the foreman, the boss, the manager, the superintendent, or board of directors. All these must make dividends or stand aside. All these adequately represent the capitalist. How can the workmen reach the capitalist thru all these intermediates? Union and representation are the fundamentals in American conceptions of social relations. The ultimate weapon of the union is the strike; deprive it of that and it is helpless and had as well not exist. Representatives may argue and plead till doomsday but what can they do? Stubborn facts of actual experience show that without the possibility of striking, workmen can do nothing to secure their just rights. Who is to blame? Certainly not the workmen.

174

A strike must end, and end speedily. Its continuance would mean going back to barbarism or worse. At best it is a gamble for the striker; it can by no means promise him a certain result. And those who suffer least are the ones against whom they are aimed. The owners of the railways can hold out indefinitely. If their property is destroyed the public must make the loss good. They only lose profits. But the modern civilized community cannot live without railway service. To it a strike means ruin, poverty, death in a thousand forms. And it is well for the trainmen to remember that unless they have public support, when thousands are perishing from a prolonged railway strike, there may be a new use for telegraph poles. They cannot trifle with the public too far. They who take the sword may perish by the sword.

175

Sailors cannot quit work on a ship for it might endanger the lives of all on board, themselves included. Mutiny is severely punisht for that reason. The very same principle applies with almost equal force to trainmen. Thousands of men, women, and children are away from home, and find themselves suddenly stranded without money and must sleep in public parks or cast themselves upon public charity; the physician is hurrying to the bedside of a patient; men under contract are stopt on the road; the whole life of the people is paralyzed; materials are held up and thousands of men are thrown out of employment. The

position of the trainman differs but little from that of the soldier and sailor; it is exceptional. The right to strike in private employment might be conceded, but public employment is different as we already recognize in the army and navy.

176

The labor leader claims that civilization at present rewards the speculator instead of the laborer. The speculator renders very little service to society and exacts an enormous recompense for it, while labor is expected to take what it can get. There are the privileged classes who perform no service at all but claim enormous rewards because of some more or less valuable service rendered by some ancestor. But all this privilege is ultimately paid by labor. Those who get something for nothing are balanced by those who get nothing for something. Whether it is right or wrong, the point of view of the labor leader must be considered in judging his acts. This point of view is that the real issue between labor and its exploiters is never submitted to arbitration, and the submission of minor matters to arbitration blocks the way to consideration of the real issues.

177

Many employers are willing to do justice to their employes—are anxious to even—but they cannot see that the system under which they would do justice is itself unjust. In the long struggle between the Irish peasantry and absentee landlords, if they had submitted their differences to arbitration, the landlords could have shown that they were doing all that was customary and legal, and that their returns on their investment were meager, that they could not afford to do more, etc., etc. But the peasants were starving. For them the system did not work. Their grievance was collective, economic; not individual or moral. Any arbitration would have assumed the validity of the system which was the real trouble. Assuming that both sides are sincere, here is the crux of the difficulty: Capital wishes to arbitrate the case; labor to arbitrate the system under which it occurs. To make such arbitration compulsory is unjust to labor. It is impossible to arbitrate a system; any arbitration must be of the case and capital has the clear advantage; his case is in court while labor's is not.

A SELECTED BIBLIOGRAPHY

(As a rule the most recent discussions are the most valuable; they are apt to sum up the best in older articles, and take advantage of the most recent facts. Only a few go back over two years.

THE AMERICAN FEDERATIONIST. Washington, D. C.

And Yet They Would Wish It on Us, Editorial, May, 1915.
Compulsory Arbitration's Latest Evangelist, Editorial, September 1914.
Australasian Labor Regulating Schemes, Samuel Gompers, April, 1915.
Lessons for Compulsory Arbitrationists, Editorial, April, 1914.
Invasion by Commission, Editorial, October, 1915.
Benevolent (?) Compulsion in Colorado, Samuel Gompers, June, 1916.
Compulsory Service or Freedom,—Which? Samuel Gompers, October, 1916.

ANNALS, AMERICAN ACADEMY.

Advantages and Defects of Compulsory Arbitration, F. T. Carlton, January, 1917.
Federal Arbitration Legislation, L. E. Hoffman, January, 1917.
Government Arbitration and Mediation, J. T. Young, January, 1917.
Legislation Concerning Railroad Service, E. R. Johnson, January, 1917.
Trend of Voluntary Arbitration in Labor Disputes, G. M. Janes, January 1917.
Labor Legislation in Australia, etc., V. S. Clark, March, 1909.
The Canadian Industrial Disputes Act, M. M. Marks, Nov. 1912.
Conditions Fundamental to Industrial Peace. G. B. Hugo, November, 1912.
Industrial Arbitration in Australia, P. S. Eldershaw, Jan. 1911.
Canadian Industrial Disputes Act, F. A. Ackland, Jan. 1917.
German Courts for Arbitration of Labor Disputes, H. Weinstock, September, 1910.
Attitude of Labor Canadian Arbitration Act, A. B. Garretson, January, 1917.
Shall Interstate Commission Fix Wages, etc., Delos F. Wilcox, January, 1917.
Railroad Hours of Labor, Charles H. VanHise, January, 1917.
Work of Employers' Associations etc., James W. VanCleave, January, 1917.
Evolution of Legal Remedies for Strikes, H. W. Ballatine, January, 1917.
Necessity of Industrial Arbitration, Rabbi Joseph Krauskoff, January, 1917.
Compulsory Arbitration in the U. S. C. J. Doyle, Sept., 1910.

AMERICAN ECONOMIC REVIEW.
Wage Theories in Industrial Arbitration, C. H. Mote, June, 1916.
Arbitration Awards Under Erdman and Newlands Act, D. A. McCabe, March, 1917.
Industrial Arbitration, C. H. Mote, September, 1916.
THE INDEPENDENT.
The Right to Strike, A. B. Garretson, Jan. 22, 1917.
Trial by Jury, Elisha Lee, Jan. 22, 1917.
Shall Force or Reason Rule, C. E. Hughes, Oct. 9, 1916.
Where Do the People Come In, Editorial, Oct. 23, 1916.
Canada's Solution of the Ry Problem, Editorial, Sept. 4, 1916.

THE LITERARY DIGEST.
The President's Anti-Strike Message, Dec. 16, 1916.

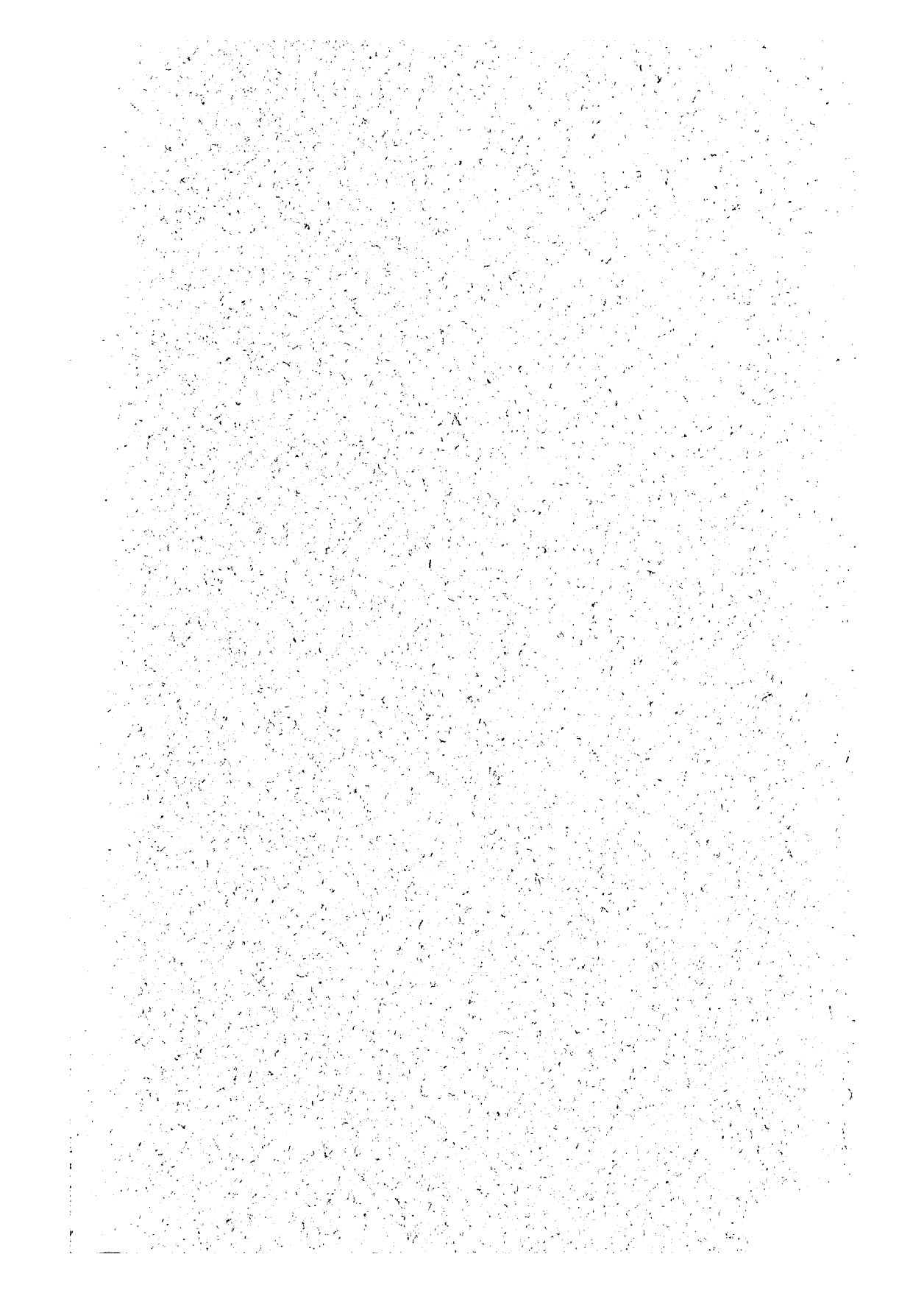
THE NEW REPUBLIC.
Beyond Arbitration, Editorial, Jan. 20, 1917.
Against Compulsory Arbitration, G. P. West, Sept. 30, 1916.
To Prevent Industrial War, W. Z. Ripley, May 6, 1916.
Arbitrated Strike, F. Hackett, Aug. 14, 1915.
Economic Statesmanship, Editorial, Feb. 6, 1916.
REVIEW OF REVIEWS, New York.
Compulsory Arbitration in Railway Disputes, Arthur Chandler, February, 1917.
Norway Adopts Compulsory Arbitration, Outober, 1916.
Special Courts to Deal with Labor Disputes, June 23, 1914.
SCRIBNERS MAGAZINE, New York.
Government Prevention of Railway Strikes, S. O. Dunn, Mar. '17.

THE SURVEY, New York.
Sec'y Wilson's Plan to Prevent Strikes, Editorial, June 9, 1917.
New Federal Committees on Arbitration, Editorial, June 9, 1917.
Industrial Servitude and the Right to Strike, J. A. Fitch, Jan. 27, 1917.
Compulsion in Australia and Canada, Editorial, Dec. 2, 1916.
Capital and Labor on Arbitration, Editorial, Nov. 25, 1916.
Fundamental Principles of Arbitration, J. A. Fitch, Sept. 23, '16.
League to Enforce Industrial Peace, Editorial, Dec. 2, 1916.
With Their Feet Under a Table, Editorial, June 17, 1916.

THE OUTLOOK, New York.
The President on Labor Disputes, Dec. 9, 1916.

THE NATION, New York.
The President and the Railways, Editorial, Feb. 1, 1917.
Experiments in Industrial Arbitration, Editorial, Aug. 17, 1916.
Tribal War, Editorial, July 12, 1916.
A Railway Arbitration, December, 1912.

C47 U4
3|3|



The University Bulletin has been established by the university. The reasons that have led to such a step are: first, to provide a means to set before the people of Oklahoma, from time to time, information about the work of the different departments of the university; and, second, to provide a way for the publishing of departmental reports, papers, theses, and such other matter as the university believes, would be helpful to the cause of education in our state. The Bulletin will be sent post free to all who apply for it. The university desires especially to exchange with other schools and colleges for similar publications.

The bulletin was changed from a quarterly to a monthly in February, 1916. Part of the monthly bulletins are assigned to a specific purpose each year; the balance are unassigned. Those that are assigned are as follows:

January—Summer Session
February—Interscholastic Meet
March—General Catalog
May—Class Schedule
July—Biennial Report (Alternate years)
September—Affiliated Schools
October—Alumni Directory
December—Class Schedule

Communications should be addressed:

THE UNIVERSITY BULLETIN
University Hall,
Norman, Oklahoma.

University of Oklahoma Press

[redacted]

[redacted]